Extract from:

UNITED NATIONS JURIDICAL YEARBOOK

1967

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 [1]

1. JUDGEMENT NO. 104 (14 APRIL 1967): [2] GILLEAD V. SECRETARY-GENERAL OF THE UNITED NATIONS

Summary dismissal for serious misconduct of a staff member holding a permanent appointment

The applicant was summarily dismissed for serious misconduct—a dismissal which, by definition, dispenses with referral to the Joint Disciplinary Committee—on the grounds that, during the twentieth session of the General Assembly, he had circulated through the United Nations distribution channel to delegations of the Member States copies of an anonymous paper bearing close resemblance to General Assembly documents and containing information regarding internal administrative matters and a proposal for General Assembly action. He requested the Tribunal to rescind the decision by which the Secretary-General had dismissed him.

The Tribunal rejected the application. It recalled that, according to its earlier judgements, the conception of serious misconduct had been introduced to deal with acts incompatible with continued membership of the staff and that the disciplinary procedure should be dispensed with only in those cases where the misconduct was patent and where the interest of the service required immediate and final dismissal. The Tribunal concluded from an examination of the facts of the case that there had been both patent and serious misconduct and that it was unable to disagree with the summary dismissal ordered by the respondent.

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[1] Under article 2 of its Statute, the Administrative Tribunal of the United Nation 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 1967, 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.

[2] Mme P. Bastid, President; the Lord Crook, Vice-President; R. Venkataraman, Vice-President; L. Ignacio-Pinto, Member.

2. JUDGEMENT NO. 105 (17 APRIL 1967):[3] FRANCIS v. SECRETARY-GENERAL OF THE UNITED NATIONS

Request for rescission of a decision of the Joint Appeals Board ruling that an appeal was not receivable

The applicant lodged an appeal with the Joint Appeals Board against the termination of her appointment in the secretariat of the Rangoon office of the Technical Assistance Board and the Joint Appeals Board decided not to entertain the appeal because it had been lodged after the expiry of the time limit laid down in staff rule 111.3. The applicant requested the Tribunal to rescind the Board's decision.

The Tribunal concluded that the part of staff rule 111.3 regarding time limits applied only to staff members at Headquarters. On the basis of an agreement between the respondent and the applicant requesting the Board to consider the appeal on its merits, the Tribunal held that it was competent to hear the application on the substance and decided that, unless the parties settled the matter, the applicant might file with the Tribunal an explanatory memorandum and pleas dealing both with the merits of and the time limits applicable to the case.

3. JUDGEMENT NO. 106 (20 APRIL 1967):[4] VASSEUR v. SECRETARY-GENERAL OF THE UNITED NATIONS

Withdrawal, for budgetary reasons, of an offer of employment made to the applicant and accepted by him

Following the rescission, for budgetary reasons, of an offer of employment made to the applicant and accepted by him, the respondent had granted the latter an indemnity equal to that which he would have received if he had entered upon his duties and if his appointment had then been terminated immediately, or the approximate equivalent of three and one half months' salary. The applicant requested the Tribunal to rescind that decision and to fix the compensation at the total salary and allowances which he would have received during the full duration of his contract.

The respondent having raised the question of the receivability of the application, asserting that the applicant had never become a member of the Organization, the Tribunal stated that a real contract by which the respondent undertook to employ the applicant had been concluded between the parties and that, since the contract was related to the appointment procedure laid down by the Staff Regulations and Staff Rules, it was not open to dispute that the issue was one which the Tribunal must resolve on the basis of rules of law. As to the substance, the Tribunal, in order to determine the bases on which the compensation should be fixed, considered the scope of the commitments made, the conditions in which they had not been executed, and the damages actually suffered by the applicant, and awarded the latter the sum of $1,000 in addition to the indemnity offered by the respondent.

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[3] Mme P. Bastid, President; the Lord Crook, Vice-President; R. Ventakaraman, Vice-President; L. Ignacio-Pinto, Alternate Member.

[4] Mme P. Bastid, President; the Lord Crook, Vice-President; F. T. P. Plimpton, Member; L. Ignacio-Pinto, Alternate Member.

4. JUDGEMENT NO. 107 (21 APRIL 1967):[5] MISS B. v. SECRETARY-GENERAL OF THE UNITED NATIONS

Non-renewal of a fixed-term appointment on medical grounds

The applicant requested the Tribunal principally to rescind the decision of the Secretary-General under which her fixed-term appointment had not been extended on medical grounds and to order the adoption of a proper medical procedure under which the staff member concerned and the Administration would each appoint a doctor and those two doctors would in turn nominate a third doctor to constitute a panel to consider cases of termination for reasons of health.

The Tribunal rejected the request. It pointed out that the Medical Director responsible for the application of the medical standards which staff members were required to meet before appointment had found the applicant suitable, medically, for a short-term appointment only, and considered that it was not competent to enter into the merits of the conclusion reached by the Medical Director. As for the medical procedure requested by the applicant, the Tribunal recalled that in earlier judgements it had emphasized the need for a proper medical procedure in cases where the staff member concerned contested the medical opinion of the Administration, but it endorsed the distinction made by the Joint Appeals Board between a medical determination affecting a staff member's acquired rights, such as in the matter of termination of a permanent appointment for health reasons, and a medical finding for the purpose of determining the eligibility of a candidate for an appointment or an extension of appointment. In the former case, due process might require the securing of an independent medical opinion, whereas in the latter case, a candidate had no inherent right to employment.

As the Tribunal ordered, the name of the applicant is omitted from the published versions of the Judgement.

5. JUDGEMENT NO. 108 (18 OCTOBER 1967):[6] KHAMIS v. UNITED NATIONS JOINT STAFF PENSION BOARD

Request by a staff member of FAO that his prior period of employment be restored as pensionable service

The applicant, a staff member of the United Nations—and a participant in the Joint Staff Pension Fund—from 1949 to 1953, had joined FAO in 1958 and thereby re-entered into participation in the Pension Fund. In 1959, he submitted to the FAO Pension Fund Committee a request that his previous contributory service credit should be restored to him. His request was denied under article XII of the Pension Fund regulations in force at the time for the reason that his participation in the Pension Fund had been interrupted by a period of more than three years. An amendment to article XII having deleted the condition relating to the length of interruption of service in 1963, the applicant made another request which the Pension Board rejected on the ground that the new text of article XII could not be applied retroactively.

The Tribunal, to which the case was referred, found that by virtue of the new text of article XII the applicant was entitled to restoration of his prior service. It considered that the construction to be placed on that new text was that the rule applied to participants in

[5] Mme P. Bastid, President; the Lord Crook, Vice-President; R. Venkataraman, Vice-President; L. Ignacio-Pinto, Alternate Member.

[6] Mme P. Bastid, President; the Lord Crook, Vice-President; R. Venkataraman, Vice-President; Z. Rossides, Alternate Member.

the Fund generally, whether they joined the Pension Fund before or after the effective date of the amendment. It pointed out the absurdity and the inequities to which restricted application of article XII only to staff members who rejoined after the effective date of the amendment would lead. The Tribunal also examined the scope of article XXXVII of the Pension Fund Regulations concerning amendments and found that neither the text of that article nor the principles governing non-retroactivity contradicted the application of the new article XII to the applicant.

6. JUDGEMENT NO. 109 (18 OCTOBER 1967):[7] ASHTON V. SECRETARY-GENERAL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION (VALIDATION OF NON-PENSIONABLE SERVICE)

Request by a technical assistance official of ICAO for validation by the Joint Staff Pension Fund of a period of employment prior to his participation in the Fund

The applicant, a technical assistance official of ICAO, requested the Tribunal principally to declare that by refusing his request for validation by the United Nations Joint Staff Pension Fund of his period of employment from 5 October 1951, the date of his entry on duty, to 1 January 1958, the date of his participation in the Fund, the respondent and the ICAO Staff Pension Committee had infringed his contract of employment.

The Tribunal rejected the application as irreceivable. It found that the application, directed against a decision of the respondent, had no substance since it had been the ICAO Staff Pension Committee, competent to decide the question of the applicant's right to validation of his prior service, which had denied the request for validation. The Tribunal noted that it was open to the applicant to appeal to the Joint Staff Pension Board and, since the applicant alleged that he had sustained injury, further noted that no compensation for the alleged injury had been requested from the respondent and that the point had not been considered by the Joint Appeals Board.

7. JUDGEMENT NO. 110 (20 OCTOBER 1967):[8] MANKIEWICZ V. SECRETARY-GENERAL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION

Request by a former staff member of ICAO for recognition of his right to the salary and allowances to which he would have been entitled if the ICAO Council's decision amending the definition of dependents had not been applied to him or, alternatively, to a personal allowance

The applicant, a former staff member of ICAO, requested the Tribunal to rule that he was entitled to the salary and allowances to which he would have been entitled if a decision of the ICAO Council amending the definition of dependency had not been applied to him, or alternatively that he was entitled to the personal allowance to make up for loss in take-home pay caused by that amendment.

The Tribunal rejected the principal request on the ground that, since no appeal had been filed with the Advisory Joint Appeals Board of ICAO within fifteen days after receipt of the administrative decisions implementing the amendment as to his case, any appeal by the applicant was barred. On the merits, the Tribunal found that the applicant's arguments challenging the legality of the Council's decision were irrelevant. The Tribunal also rejected the alternative request on the ground that the applicant's take-home pay had not been lessened.

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[7] Mme P. Bastid, President; the Lord Crook, Vice-President; R. Venkataraman, Vice-President; L. Ignacio-Pinto, Alternate Member.

[8] R. Venkataraman, Vice-President, presiding; L. Ignacio-Pinto, Member; F. T. P. Plimpton, Member; Z. Rossides, Alternate Member.

8. JUDGEMENT NO. 111 (20 OCTOBER 1967): [9] ASHTON V. SECRETARY-GENERAL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION (REIMBURSEMENT OF INCOME TAX)

Request for rescission of a decision not to reimburse to a technical assistance official of ICAO the sums to be paid by him to the United Kingdom authorities as income tax on an annuity paid to a dependant under a Court Order

The applicant, a technical assistance official of ICAO, requested the Tribunal to rescind a decision of the Secretary-General refusing to refund to the applicant payments to be made by him to the United Kingdom authorities as income tax on an annuity paid to a dependant under a Court Order.

The Tribunal rejected the request on the ground that the tax claimed by the United Kingdom authorities was not on the emoluments received by the applicant from ICAO but on the annuity payments received by the beneficiary under the order of Court. Since under section 170 of the United Kingdom Income Tax Act, 1952, a person making annuity payments has to deduct from them a sum representing the amount of the tax on the recipient at the standard rate in force at the time of the payment, the obligation that the United Kingdom tax authorities were enforcing arose out of the annuity payments and not out of the receipt of emoluments from ICAO.

9. JUDGEMENT NO. 112 (25 OCTOBER 1967): [10] YÁÑEZ V. SECRETARY-GENERAL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION

Non-renewal of a fixed-term appointment of a technical assistance expert of ICAO

The applicant had entered the service of ICAO in 1962 under a short-term appointment as an air traffic controller for the ICAO Technical Assistance Mission in the Democratic Republic of the Congo and his appointment had subsequently been extended four successive times. When the Secretary-General decided not to grant him a further extension, the applicant requested the Tribunal to rescind that decision which he attributed to prejudice and the personal animosity of the Chief of Mission.

The Tribunal rejected the request. It observed that the decision taken by the respondent not to renew the applicant's contract had been within the former's discretion. Furthermore, that decision could not impair or prejudice any legitimate right or expectation since, under rule 2.3 (*c*) of the Field Service Staff Rules, the appointment did not carry any expectation of or imply any right to renewal. There were therefore no grounds for examining the presumed or possible motives for non-renewal of the contract, for in order to give rise to the possibility of considering rescission of a discretionary administrative decision for misuse of power, on the basis of an inquiry into its motivation, that decision must impair a right or a legitimate expectation.

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[9] R. Ventakataraman, Vice-President, presiding; L. Ignacio-Pinto, Member; F. T. P. Plimpton, Member; Z. Rossides, Alternate Member.

[10] Mme P. Bastid, President; H. Gros Espiell, Member; L. Ignacio-Pinto, Member; Z. Rossides, Alternate Member.

10. JUDGEMENT NO. 113 (25 OCTOBER 1967):[11] COLL v. SECRETARY-GENERAL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION

Termination, at the request of the assisted Government, of the fixed-term appointment of a technical assistance expert of ICAO

The applicant, holder of a short-term appointment as an Air Traffic Controller with the ICAO Technical Assistance Mission in the Congo, had been held responsible by the Congolese Government for an air incident that occurred at N'Djili airport. The Government had requested his departure and, although the ICAO Committee of Inquiry had exonerated him, the Secretary-General of ICAO had terminated his appointment "in the interest of the Organization" on the basis of rule 9.4 (*d*) of the Field Service Staff Rules.

The Tribunal found that the decision to terminate his appointment was invalid. It recalled that the right to end a contract "in the interest of the Organization" conferred on the Secretary-General a discretionary power, but that the exercise of this power should conform to certain general principles. It noted that the request of the Congolese authorities cast doubt on the applicant's professional competence and that the respondent had not followed the procedure which he had undertaken to follow in order that the facts might be clarified and the applicant enabled to explain his actions. The applicant had therefore been deprived of fundamental guarantees, and his right to be heard in a case involving his professional competence had been disregarded. Inasmuch as the reinstatement of the applicant was impossible in practice, the Tribunal awarded to him, for the prejudice suffered, an indemnity equivalent to his base salary for the period of the contract remaining as from the date of termination, less the sums already paid following the termination.

B. Decisions of the Administrative Tribunal of the International Labour Organisation [12, 13]

1. JUDGEMENT NO. 97 (9 MAY 1967): JURADO v. INTERNATIONAL LABOUR ORGANISATION (NO. 4—WAIVER OF IMMUNITY OF THE CHILD JURADO) *

Lack of competence of the Tribunal to review decisions of the Director-General concerning the immunity from jurisdiction of ILO officials and members of their families

The complainant was asking the Tribunal to quash a decision of the Director-General of ILO refusing to waive the immunity of the complainant's son in respect of civil action against the Organisation. The Tribunal dismissed the complaint on the ground that it was not competent to review decisions of the Director-General concerning the immunity from jurisdiction of officials of ILO and members of their families.

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* The complainant challenged the competence of the judges of the Tribunal, which rejected the challenge as having no valid ground.

[11] Mme P. Bastid, President; H. Gros Espiell, Member; L. Ignacio-Pinto, Member; Z. Rossides, Alternate Member.

[12] 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, as at 31 December 1967, 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

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2. JUDGEMENT NO. 98 (9 MAY 1967): JURADO v. INTERNATIONAL LABOUR ORGANISATION (NO. 5—EDUCATION GRANT) *

Conditions governing the payment of the education grant

The complainant had applied for an education grant in respect of his son, stating that the child, having been removed from the custody of his father by the Swiss Authorities, had not been able to receive his education in Spain. After the Administration had rejected his application, the complainant brought his case to the Tribunal. The Tribunal pointed out that under article 3.14 (i) of the Staff Regulations:

> "The [education] grant shall be payable upon the presentation of evidence satisfactory to the Director-General that the conditions required by this Article are fulfilled."

It was clear, in fact, from the terms of the complainant's application that none of the conditions required by the above-mentioned provision were fulfilled. The Tribunal therefore dismissed the complaint.

3. JUDGEMENT NO. 99 (9 MAY 1967): JURADO v. INTERNATIONAL LABOUR ORGANISATION (NO. 6—ALLEGATIONS OF COLLUSION AND DIVULGING CONFIDENTIAL INFORMATION) *

The complaint sought to have ILO ordered to pay various amounts of compensation for divulging confidential information and refusing to waive immunity from jurisdiction. It was dismissed on the ground that the submissions it contained were clearly wholly unfounded or were based on arguments already dismissed by the Tribunal in Judgements Nos. 70 [14] and 83. [15]

4. JUDGEMENT NO. 100 (9 MAY 1967): JURADO v. INTERNATIONAL LABOUR ORGANISATION (NO. 7—TRANSFER) *

Interpretation of article 1.9 of the Staff Regulations

Because of friction with his Chief, the complainant had been transferred from one section of the Editorial and Translation Service to another. He requested that the decision to transfer him should be rescinded on the ground that it was a punitive measure and was illegal. This request having been refused, he asked the Tribunal to declare that the reports of the chiefs of the sections concerned and the decision to transfer him were erroneous in law and to order that the decision should be rescinded. The Tribunal dismissed the complaint. It pointed out that under the terms of article 1.9 of the Staff Regulations:

(Continued.)

Atomic Energy Agency, the United International Bureaux for the Protection of Intellectual Property, the European Organization for the Safety of Air Navigation and the Universal Postal Union. The Tribunal is also competent to hear disputes with regard to the execution of certain contracts concluded by the International Labour Organisation and disputes relating to the applications 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.

* The complainant challenged the competence of the judges of the Tribunal, which dismissed the challenge as having no valid ground.

[13] Mr. M. Letourneur, President; Mr. A. Grisel, Vice-President; Lord Devlin, Judge.

[14] See *Juridical Yearbook, 1964*, p. 209.

[15] *Ibid., 1965*, p. 212.

"The Director-General shall assign an official to his duties and his duty station subject to the terms of his appointment, account being taken of his qualifications."

The Tribunal, having noted that the complainant had been recruited for a post in the Editorial and Translation Service, held that by transferring him from one section to another within the said Service, the Director-General was merely exercising his right under the aforementioned article 1.9 and was conforming to the terms of the complainant's appointment. It appeared from the documents in the dossier that the decision complained of had been taken in the interests of the service, had not been accompanied by any reduction in salary and had in no way affected the statutory rights of the complainant. It was therefore neither illegal nor punitive.

5. JUDGEMENT NO. 101 (9 MAY 1967): JURADO v. INTERNATIONAL LABOUR ORGANISATION (NO. 8—ATTEMPTED INTIMIDATION AND NEW APPEAL TO THE INTERNATIONAL COURT OF JUSTICE) *

Exercise of the right of appeal to the International Court of Justice—Right of the Organisation to authorize the publication of a commentary of a scientific nature on a public judgement of the Tribunal—The Parties are not obliged to refer the Tribunal to previous judicial decisions on the subject of a dispute

The complainant, who had requested that the question of the validity of Judgement No. 83 [16] of the Tribunal should be submitted to the International Court of Justice, had asked the Director-General to place that request before the Governing Body, had stated that, in the event of refusal, he proposed to submit it to the members of the Governing Body individually and had asked to what penalties this procedure would render him liable. When his request was refused, with a warning of the possible consequences of the steps he was contemplating, the complainant requested the Tribunal to find that the Administration, by refusing to apply any legal remedy to correct Judgement No. 83, the purpose of which was to impose Judgement No. 70 [17] on the complainant, had directly or indirectly violated articles 13.2, 1.7, 7.5 and 7.6 of the Staff Regulations.

Furthermore, in connexion with the publication in a legal periodical of an article by an ILO official which dealt, *inter alia*, with Judgement No. 70, the complainant submitted an incidental plea in which he accused ILO and its agent of having "published the case of Jurado *v.* International Labour Organisation while it is still *sub judice*" and of having, during the examination of earlier actions concerning the complainant, deliberately withheld important previous judicial decisions from the Administrative Tribunal.

The Tribunal dismissed the submissions in the complaint as being unconnected with the professional interests of the complainant. It also dismissed those in the incidental plea, stating that the fact that the Organisation had authorized the publication of a commentary of a purely scientific nature was not open to criticism and that ILO had in no way misled the Tribunal by not referring to certain previous judicial decisions, since it was the function of the judge to search for these as a matter of routine.

* The complainant challenged the competence of the judges of the Tribunal, which dismissed the challenge as having no valid ground.

[16] See *Juridical Yearbook, 1965*, p. 212.

[17] *Ibid.*, 1964, p. 209.

6. JUDGEMENT NO. 102 (9 MAY 1967): JURADO v. INTERNATIONAL LABOUR ORGANISATION (NO. 9—EFFECTS OF ANNULMENT OF MARRIAGE) *

The Administration is obliged to intervene in questions giving rise to a conflict of law only to the extent required for the purpose of applying the Staff Regulations

The complainant had been in receipt of an allowance for a dependent spouse. He submitted an application for a family allowance in respect of his mother, giving his marital status as "single". As proof of his single status, he produced an Order declaring that his marriage had been canonically annulled. The Administration accordingly ceased to pay him the allowance for a dependent spouse and granted him an allowance in respect of his mother. The complainant then asked the Director-General to continue to apply his national law to him in respect of his marital status, to continue to regard him as single and to take the necessary measures to arrest divorce proceedings involving him, and to take the necessary action to restore his child to him, since he was his sole legal guardian under his national law. Having received no reply to this letter, the complainant requested the Tribunal to declare the Administration's tacit refusal illegal and to find in his favour on the above-mentioned points.

The Organisation submitted, *inter alia*, that a distinction had to be made between applications for allowances involving questions of civil law, which must necessarily be settled by the ILO in the event of a conflict of law in order to determine whether a right or obligation under the Staff Regulations existed, and questions relating to the waiver of immunity and the exercise of "diplomatic protection", in which case only the interests of the Organisation and the official duties of its staff members were material. The effect of the distinction was that unless those interests and duties were involved, a waiver of immunity should not be refused or "diplomatic protection" exercised, since such measures could not affect the issue of a conflict of law submitted to the courts, which was not a matter for ILO but for the parties themselves.

The Tribunal dismissed the complaint, considering that the complainant had objected to the silence of the Administration in a matter in which it was not obliged to intervene, even in so far as it would have had power to do so.

7. JUDGEMENT NO. 103 (9 MAY 1967): JURADO v. INTERNATIONAL LABOUR ORGANISATION (NO. 10—AMENDMENTS TO THE STAFF REGULATIONS)

Lack of competence of the Tribunal in the absence of a decision giving ground for complaint

The complainant sought the rescinding, as illegal and prejudicial to his acquired rights, of an instruction notifying staff members of various amendments to the Staff Regulations. The Tribunal found that the complainant had adduced no decision applying any of those amendments to his particular case. He did not, for example, allege non-compliance with the terms of his appointment or any violation of his status and the Tribunal therefore was not competent to hear his complaint.

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* The complainant challenged the competence of the judges of the Tribunal, which dismissed the challenge as having no valid ground.

8. JUDGEMENT NO. 104 (9 MAY 1967): JURADO v. INTERNATIONAL LABOUR ORGANISATION (NOS. 11 AND 16—COMPENSATION FOR OVERTIME)

Article 7.2 (b) *of the Staff Regulations—Discretion of the Director-General concerning compensation for overtime*

The complainant had been required to work twenty-nine hours' overtime, including six hours on a Saturday. Having been granted two days of compensatory leave, he submitted that Saturday should be considered a holiday and that he should therefore be granted leave for a period equal to the period of overtime worked on that day, and that overtime should in any event be compensated for by leave for an equal or longer period. He made a similar claim on another occasion and, both claims having been rejected, he submitted two complaints to the Tribunal, which it disposed of in a single judgement.

The Tribunal found that a clear and specific distinction is made in article 7.2 (*b*) of the Staff Regulations: overtime worked on a Sunday (or the equivalent day of rest) or on an established holiday gives entitlement to a period of compensatory leave equal to the amount of overtime worked. In other cases the amount of compensatory leave is not laid down by the Staff Regulations and is left to the discretion of the Director-General. Since, in the case at issue, the overtime was not worked on a Sunday or established holiday, the Director-General was free to decide the amount of compensatory leave. The complaint was therefore dismissed.

9. JUDGEMENT NO. 105 (9 MAY 1967): JURADO v. INTERNATIONAL LABOUR ORGANISATION (NO. 15—WAIVER OF IMMUNITY) *

Authority competent to sign a waiver of immunity

At the request of the Department of Justice and Police of the Canton of Geneva, the Director-General had decided to waive the immunity from jurisdiction of the complainant in connexion with proceedings for non-payment of maintenance allowance and desertion of his family. The complainant objected to that decision on the ground that it had been signed by the Legal Adviser of ILO who, he contended, lacked the necessary powers of signature and representation. The Tribunal dismissed the complaint, pointing out that the Director-General had delegated to the Legal Adviser power to sign all waivers of immunity.

10. JUDGEMENT NO. 106 (9 MAY 1967): WALTHER v. UNITED INTERNATIONAL BUREAUX FOR THE PROTECTION OF INDUSTRIAL PROPERTY

Reclassification of an official in a new grading system—Matters amenable to the Tribunal's power of review—Discretion of the Director

Under the new grading system established by the Staff Regulations of BIRPI of 1 July 1963, the complainant, like all other staff members, was reclassified and was the subject of a preliminary recommendation of the Integration Committee set up under article 2.1 (T) of the Staff Regulations. This recommendation was thereafter confirmed by the Committee, accepted by the Director of BIRPI and subsequently upheld by the Appeals Board. The complainant then requested the Tribunal to quash the decision and order that he should be reclassified in a higher grade.

The Tribunal dismissed the complaint. It found that the procedure for integrating the staff in the new system laid down by article 2.1 (T) of the Staff Regulations had been

* The complainant challenged the competence of the judges of the Tribunal, which dismissed the challenge as having no valid ground.

correctly applied. It also pointed out that the Director, having fulfilled his twofold obligation to hear the opinion of the *ad hoc* Integration Committee and to be guided by the standards adopted by other international organizations, was free to exercise his discretion, and that the Tribunal had to confine itself to determining whether the decisions made were erroneous in law or based on materially incorrect facts, or whether essential facts had not been taken into consideration or whether conclusions which were manifestly incorrect had been drawn from the complainant's dossier. The complainant had not shown that the decision impugned was open to criticism in any of those respects, in which the Tribunal's limited power of review could be exercised.

11. Judgement No. 107 (9 May 1967): Passacantando v. Food and Agriculture Organization of the United Nations

Rights of persons already employed by the Organization in the event of vacancies—Scope of articles 301.043 and 301.044 of the Staff Regulations

The complainant, who had held a series of fixed-term appointments, became a candidate for a post of indeterminate duration for which a competitive examination was held by the respondent Organization. He was not selected and was informed that he would be separated from the Organization. He then requested the Tribunal to quash this decision as violating articles 301.043 and 301.044 of the Staff Regulations. The Tribunal dismissed the complaint. It found that under article 301.043, candidates for vacancies had to be selected on the basis of competitive examination and that, under the terms of article 301.044, full regard had to be paid to the qualifications and experience of persons already in the service of the Organization. It followed that, when vacancies occurred, staff members of the Organization were entitled to sit for any competitive examination open to them. That right necessarily included the right to demand that the arrangements for the competitive examination should ensure the appointment of candidates who were really the best qualified. In other words, at all stages of the examination—the arrangements made for it, the conduct of the tests and the evaluation of the results—every candidate had to be treated on an equal footing and with full impartiality. Moreover, the Organization was not bound to appoint serving staff members in preference to candidates from outside. If that privilege were automatically granted to its staff, it might find itself having to take decisions contrary to its own interests, which was certainly not the intention of those who drew up the Staff Regulations. In point of fact, serving staff members had priority only if their performance revealed qualifications at least equal to those of the other candidates. In the case at issue the Tribunal held that the arrangements for the examination, the conduct of the tests and the evaluation of the results were not open to criticism and that the complaint was therefore ill-founded.

12. Judgement No. 108 (9 May 1967): Kundra v. United Nations Educational Scientific and Cultural Organization

Time-limit for appeals to the UNESCO Appeals Board and the Administrative Tribunal—Paragraphs 7 and 8 of the Statutes of the Appeals Board and article VII, paragraphs 2 and 3, of the Statute of the Tribunal

On 4 April 1964 the complainant, who held an indeterminate appointment, received a cable from the Director of Personnel of UNESCO terminating his appointment under the terms of article 9.1 of the Staff Regulations, the termination to take effect on the date of receipt of the cable. A letter received by the complainant not later than 25 April stated that the decision had been taken as a consequence of (unspecified) actions of the complainant

which were not in conformity with the standards of conduct of UNESCO staff and accordingly constituted unsatisfactory service within the meaning of article 9.1 of the Staff Regulations. On 6 and 7 April the complainant expressed his intention of appealing against the decision to terminate his appointment. At that time and on many subsequent occasions he asked why the decision was taken. He invariably received the reply that there was nothing to add to the content of the above-mentioned letter. On 19 April 1965 the complainant appealed to the UNESCO Appeals Board, which stated that the appeal was not receivable, having been submitted after expiry of the prescribed time-limit. The Director-General decided on 3 August 1965 to accept that opinion and the complainant submitted his complaint to the Tribunal on 12 October 1965. He alleged violation of the right to be heard on the ground that he had not been informed of the charges against him and requested the quashing of the decision to reject his internal appeal and of the decision to terminate his appointment.

The Tribunal dismissed the complaint. It found that the complainant's letter of 6 April 1964 had to be regarded as a protest against the decision to terminate his appointment and that the Director-General had allowed the period of fifteen working days laid down by paragraph 7 of the Statutes of the Appeals Board to expire without giving a ruling on that protest. The administration's silence could be regarded not only as giving the complainant, under article 8 of the Statutes of the UNESCO Appeals Board, a further time-limit of fifteen days to submit a claim to the Secretary of the Appeals Board, but as giving him direct access to the Administrative Tribunal under article VII, paragraphs 2 and 3, of the Statute of the Tribunal, which provides that where the administration fails to take a decision upon any claim of an official within sixty days, the official has ninety days to submit his complaint to the Tribunal. If the first interpretation was accepted, it was sufficient to note that the complainant had allowed the time-limit of fifteen days to expire and that his appeal to the Appeals Board was therefore not receivable and his complaint against the Director-General not founded. If the second interpretation was accepted, the complainant should have submitted his complaint to the Tribunal within the ninety days following the sixty days during which the administration had failed to rule on his claim, i.e., not later than 3 September 1964. The complaint submitted on 2 October 1965 was therefore not receivable.

The Tribunal added that the fact that no reasons had been given for the decision to terminate his appointment, far from impeding the operation of the appeals procedure, was in itself sufficient reason for challenging that decision.

13. Judgement No. 109 (9 May 1967): Terrain v. World Health Organization

Limits of the Tribunal's power to review decisions taken by the Director-General under article 960 of the Staff Regulations

Because of the friction with her supervisor the complainant had been transferred to another section, in which her work and conduct gave rise to criticism. The Administration decided to terminate her contract under article 960 of the Staff Regulations. Having exhausted all internal remedies, the complainant appealed to the Tribunal, charging that the decision impugned had been partial and based on personal prejudice. The Tribunal dismissed the complaint. It found that, although the complainant disputed the accuracy of the facts on which the decision was based, she had not adduced a shred of evidence in that respect and that, since the decision did not appear to have been based on incorrect facts, the Tribunal could not substitute its power to review for the discretion conferred on the Director-General under article 960 of the Staff Regulations concerning holders of probationary appointments.

14. JUDGEMENT NO. 110 (9 MAY 1967): JURADO v. INTERNATIONAL LABOUR ORGANISATION (NO. 14—SICK LEAVE) *

Grant of sick leave on half salary—Scope of the notion of illness due to and arising out of employment

The complainant challenged the legality of two decisions by which the Administration, having regard to the fact that he had exhausted his entitlement to sick leave on full salary, had granted him sick leave on half-salary. He contended that his ill health was due to the decisions of the Administration contained in Judgement No. 70 and should therefore be regarded as an illness due to and arising out of his employment, and that the provisions invoked by the Administration therefore were not applicable to his case.

The Tribunal dismissed the complaint; it pointed out that the legality of the decisions to which the complainant attributed his ill health had been confirmed by Judgement No. 70 and that the disorders from which the complainant suffered could therefore not be regarded as due to and arising out of his employment.

15. JUDGEMENT NO. 111 (9 MAY 1967): JURADO v. INTERNATIONAL LABOUR ORGANISATION (NOS. 12 AND 13—SANCTIONS)

A complaint relating to two decisions having no connexion with each other is receivable only in so far as it resists the first decision specified therein—Actions constituting serious misconduct

In a single complaint the complainant impugned two decisions of the Administration which were unconnected with each other. The Tribunal, following a rule generally recognized by the courts, decided that the complaint was receivable only in so far as it resisted the first decision specified therein.

The effect of that decision was to apply a reprimand to the complainant for having invited a number of ILO officials who were not personally acquainted with him to become parties to proceedings which concerned him alone. The Tribunal held that that decision was formally correct and legally justified, since the complainant had in fact sought to discredit ILO and the Tribunal; such actions constituted serious misconduct and therefore justified the application of a disciplinary sanction. The Tribunal therefore dismissed the complaint.

16. JUDGEMENT NO. 112 (18 OCTOBER 1967): CRAPON DE CAPRONA v. WORLD HEALTH ORGANIZATION

Inadmissibility of a plea to quash a periodic report—Limits to the Tribunal's power to review a decision terminating a probationary appointment

The complainant, who had been appointed on 1 February 1965 for two years, the first being regarded as a probationary period, had received an unfavourable first periodic report. He informed the Organization that he intended to leave his employment on 31 July 1966 at the latest, but was subsequently granted an extension of his probationary period for six months. On 20 April 1966, three weeks after his return from a long period of sick leave, a second unfavourable periodic report was made on him and he was notified on 25 May 1966 that his appointment would be terminated on 31 July 1966 for unsatisfactory service, in accordance with Staff Rule 960. He subsequently submitted a complaint to the Tribunal

* The complainant challenged the competence of the judges of the Tribunal, which dismissed the challenge as having no valid ground.

in which he requested the quashing of the second periodic report and the payment of damages equal to the salary which he would have received for the final six months of his contract.

The Tribunal dismissed the complaint. On the plea to quash the periodic report, it pointed out that the report, which merely assessed the capabilities of the complainant, did not constitute a decision which could be rescinded. On the claim for damages for termination of appointment, the Tribunal found that the probationary period would normally have ended after one year and had been extended for six months at the request of the complainant and in his interests. As the purpose of the extension was not to allow of a further review of the complainant's capabilities, the provisions of Staff Rule 440, second paragraph, were not applicable and the date of preparation of the second periodic report was, in fact, of no significance. With regard to the decision to terminate his appointment, the Tribunal pointed out that it could review such a decision, in the case of a probationary appointment, only if it was irregular in form or based on incorrect facts, or if conclusions which were clearly incorrect had been drawn from the dossier. No such considerations applied in the case at issue.

17. Judgement No. 113 (18 October 1967): Benedek v. International Atomic Energy Agency

Rules governing the attribution of local and non-local status to staff members—Rule 3.033 of the Staff Rules of IAEA

The complainant went to Vienna in August 1960, at which time she was stateless, and applied for employment to IAEA, which granted her a contract for five days, which was thereafter renewed from week to week and later for longer periods. In October 1961 she was granted a contract for one year, which she accepted subject to her right to appeal against her recruitment as a "local" staff member. She did, in fact, ask to be given non-local status, but her request was refused by a decision of 11 June 1965, which was later confirmed by the Director-General on the recommendation of the Joint Appeals Committee of the Agency. She then complained to the Tribunal, requesting that she should be granted non-local status as from 1 November 1961.

The Tribunal dismissed the complaint. It noted that under Rule 3.033 of the Staff Rules of IAEA the attribution of local or non-local status to employees was, with certain specified exceptions, definitively settled on the date of appointment and in accordance with the rules in force on that date. The dispute accordingly had to be settled on the basis of the text of Rule 3.033 which was in force on the date of recruitment, i.e. without reference to the amendments made to that rule on 2 August 1965. The Tribunal also found that although Rule 3.033, paragraph (A)(ii), of the Staff Rules stated, *in fine*, that persons who were not nationals of the country of the duty station and who went to that country for service with the Agency might be given non-local status, the documents in the dossier showed that the complainant had not gone to Vienna for the purpose of service with the Agency and could therefore not invoke that provision. Consequently the general principle that recruitment in the country of the duty station normally resulted in local status was applicable in her case.

18. Judgement No. 114 (18 October 1967): Ghatwary v. Food and Agriculture Organization of the United Nations

Article VII, paragraph 1, of the Statute of the Tribunal—Complaint not receivable by the Tribunal until all remedies provided by the Staff Regulations have been exhausted

The complainant had been informed, as a result of an investigation carried out in the office in which he worked, that he would be dismissed for misconduct with effect from

14 January 1966. It was eventually agreed, however, that he should resign with effect from that date. On 8 February 1966 the complainant requested the Director-General of FAO to reconsider the case as a whole. He received a reply to the effect that the Organization could not reconsider its acceptance of his resignation. He then asked that a further investigation should be made, but the Administration refused, stating in a letter of 17 March that an investigation had already been made and that the matter was closed. The complainant subsequently indicated that he accepted the contents of the letter of 17 March.

On 16 June 1966 the complainant requested the Tribunal to cancel the decision terminating his employment. The Tribunal held that the complaint was not receivable under article VII, paragraph 1, of its Statute, pointing out that the complainant had not appealed to the Appeals Committee of FAO in accordance with the procedure established by Staff Rule 303.131 against the decision of 17 March and had therefore not exhausted all means of recourse available to him under the Staff Regulations.

19. JUDGEMENT NO. 115 (18 OCTOBER 1967): NOWAKOWSKA v. WORLD METEOROLOGICAL ORGANIZATION

Date on which annual reports on staff members are drawn up—Withholding of annual salary increment—A permanent official may be transferred to a temporary post provided he retains all rights acquired through his permanent appointment

A basic report on the complainant had been made on 1 April 1965, in connexion with her promotion, and an annual report was due on 1 October 1965. As the Chief of Division had indicated that he wished to await the complainant's return from sick leave to discuss her work with her, the latter report was not drawn up until 6 December. The Chief of Division recommended that the decision with regard to her annual increment should be deferred. That decision was, in fact, deferred several times and the complainant was eventually informed that the Secretary-General had decided not to award her an annual increment and to transfer her to a temporary post. The complainant asked the Tribunal to quash the above-mentioned decisions. She contended (1) that the decision to withhold the annual increment had been taken on the basis of a delayed report; (2) that, in the absence of an annual report drawn up prior to 1 October 1965, she was automatically entitled to a salary increment because a basic report had been drawn up on 30 March 1965; and (3) that the decision to transfer her was irregular, inasmuch as the post was a temporary one which could not be filled by a permanent staff member.

The Tribunal dismissed the complaint. On the first contention, it held that an appeal based on the late date at which the report of 6 December had been drawn up was ill-founded: although paragraph 8 of Administrative Service Note No. 312 provided that the end of the period covered by the report should "normally" coincide with the date of the award of the within-grade salary increment, that provision was in no way mandatory and in the circumstances of the case it had been waived quite legitimately. On the second contention, the Tribunal pointed out that under paragraph 7 of Note No. 312, the drawing up of an annual report when a within-grade increment was due was clearly unnecessary when certain conditions were fulfilled, but that those conditions were not fulfilled in the case at issue; moreover, the absence of an annual report could not automatically establish an entitlement to a salary increment. On the third contention, the Tribunal stated that, while it was competent to review the formal correctness and legality of decisions of the Secretary-General to transfer staff members, it could not usurp the Secretary-General's function of assessing the work and qualifications of staff members conferred on him by Staff Regulation 1.2. It pointed out that, in spite of her assignment to a temporary post, the complainant retained all the rights resulting from her permanent appointment with the Organization.