

SEVENTEENTH ORDINARY SESSION

In re JURADO

(No. 9 - Effects of annulment of marriage)

Judgment No. 102

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Labour Organisation drawn up on 7 December 1965 by Mr. Cesáreo Jurado, the reply of the Organisation of 12 January 1966, the rejoinder of the complainant of 15 March 1966, the letter of 23 March 1966 by which the Organisation stated that it did not wish to avail itself of the opportunity to reply, complainant's memorandum "concerning new facts" of 14 April 1966 and the accompanying documents, and the Organisation's comments on these documents dated 25 May 1966;

Considering Articles II, VI and VII, paragraph 3, of the Statute of the Tribunal;

Having examined the documents in the dossier, the oral proceedings and hearing of an expert requested by complainant having been disallowed;

Considering that the material facts of the case are as follows;

A. After a long exchange of correspondence with the Administration concerning his marital status and his right to family allowances, complainant, who had formerly been in receipt of an allowance for a dependent spouse, completed a new application form for family allowances on 20 July 1965 indicating his marital status as "single" and requesting an allowance on behalf of his mother. The Administration having asked to be shown the decision by which, as Mr. Jurado asserted his marriage had been annulled, complainant produced on 4 August 1965 copy of an Order of 2 June 1965 made by the ecclesiastical authorities of the Diocese of Lausanne, Geneva and Fribourg stating that "the union contracted on 13 October 1956 between Cesáreo Jurado and Jocelyne Hugentobler is null and void". On 12 August the Administration, noting that Mr. Jurado had declared himself to be single, decided to suspend the payment of the allowance on behalf of his spouse and to grant an allowance on behalf of his mother.

B. By letter of 4 October 1965, complainant, referring to the fact that "in view of the Judgment annulling my marriage issued by the competent authority, which is at present in course of execution, the Administration of the I.L.O. has recognised that I am single and has suspended payment of the allowance on behalf of my spouse", asked the Director-General "after this positive act of the Administration under your orders ... to continue to apply my national law in respect of my marital status, and to continue to regard me as single, by taking the necessary measures to arrest the second divorce proceedings now in progress which have served as a pretext for the Swiss authorities to remove my son from my custody, and to take the necessary measures to restore my child to me, since under Article 154 CC of the Spanish Civil Code I am his sole legal guardian".

C. Having received no reply to this letter, Mr. Jurado brought his case before the Administrative Tribunal under Article VII, paragraph 3 of its Statute, presenting his submissions in the following terms:

"As to Form:

1. To declare the present complaint and the appended documentary evidence receivable.
2. To treat the present dispute as a matter of urgency and to convene an extraordinary session of the Administrative Tribunal.
3. To agree that Judges Maxime Letourneur, President, André Grisel, Vice-President, and Hubert Armbruster, Deputy Judge, should not try the case.

4. To order a hearing for the purpose of pleadings, evidence by an expert and the submission of any new facts that may arise.

5. To order the appearance as a sworn expert of Mr. Trías de Bes, former Professor of International Public and Private Law at the University of Barcelona and Special Adviser to the Ministry of Foreign Affairs of Spain.

As to Substance:

1. To find that the rejection by the I.L.O. Administration, through the silence of its administrative organs, of the request made by complainant in his registered letter of 4 October 1965, confirmed on 7 November 1965, is in violation of Articles 1.2 and 1.7 of the Staff Regulations, of Article 40 of the I.L.O. Constitution and of the Agreement of 11 March 1946 between Switzerland and the I.L.O. concerning the diplomatic privileges and immunities of officials.

2. Having so found, to order the International Labour Office to pay damages for the direct and indirect injury already suffered by complainant in the amount of:

(a) 100,000 Swiss francs on account of insult to the religious and national sentiments of complainant by submitting him to a (second) divorce action prohibited in Spain.

(b) 100,000 Swiss francs for insult to the religious and national sentiments of the child Jurado, by tolerating his abduction and captivity in Switzerland since October 1960, it having been wholly impossible for him to see his father since 9 December 1962.

(c) 100,000 francs for non-observance by the I.L.O. of complainant's freedom of access to and residence in Switzerland, by imposing on him Swiss divorce proceedings while recognising his marital status as that of a single man.

(d) 250,000 francs on account of the direct and active connivance of the I.L.O. in the abduction and captivity of the child Jurado since 1960, including his complete disappearance on 9 December 1962.

(e) 100,000 francs for sundry professional and material injuries.

3. To order the I.L.O. to perform the obligations relied upon within 30 days:

(a) to restore freedom of access to and residence in Switzerland to the child Jurado, by making it possible for him to receive a religious and Spanish education, and to leave Switzerland;

(b) to restore the freedom of access to and residence in Switzerland of complainant as a single man by arresting the second divorce proceedings imposed upon him by the I.L.O.;

(c) to restore the same freedom of access to and residence in Switzerland by restoring to complainant the child Jurado, his legitimate son, in his capacity as sole legal guardian of the child;

(d) to restore complainant's independence as an official of the I.L.O.

4. If the Administrative Tribunal or the I.L.O. itself should consider that the performance of the obligation relied upon is not possible or advisable, to order the I.L.O. to pay 5 million Swiss francs on the same counts, and in particular on account of the direct and active connivance of the I.L.O. in the abduction and captivity of the child Jurado."

D. The Organisation contends, first, that officials are entitled to forgo an allowance for their spouse, even if entitled to it, and that there was no reason to go further into complainant's statements, beyond asking for a document which would protect the Organisation against a later application from the official, and in particular would protect the Pensions Fund against possible applications from potential beneficiaries; and secondly, that a distinction should be made between requests for allowances, which involve questions of civil law and in the event of a conflict of laws must necessarily be settled by the I.L.O. for the purpose of determining whether or not a given right or obligation exists under the Staff Regulations, and the problems connected with the waiver of immunities and the exercise of "diplomatic protection", which are related only to the interests of the Organisation and the official duties of its

officers, so that if these interests and duties are not involved there is no reason to refuse a waiver of immunity or to extend "diplomatic protection", this having no influence on the settlement of a dispute submitted to the courts under the responsibility not of the I.L.O., but of the parties themselves. It follows that by using the canonical annulment of his marriage and the withdrawal at his own request of the allowance for his spouse as an argument for the purpose of reopening the dispute finally settled by Judgment No. 70 of the Administrative Tribunal, Mr. Jurado has not adduced a separate cause of action for the present complaint different from that which formed the basis of the case settled by Judgment No. 70, which in fact was based on the same facts and raised the same legal questions. The Organisation submits that the complaint is not receivable, and subsidiarily, that it should be dismissed.

E. With regard to the fact that by its Judgment of 3 March 1966, the Third Chamber of the Civil Court of Madrid ordered the execution in Spain of the canonical annulment of Mr. Jurado's marriage and granted him full authority and sole guardianship over his child, the Organisation, in its comments on complainant's statement on the aforesaid judgment, points out that this judgment confirms the progressive gravity of the conflict of law which arose out of the family difficulties of Mr Jurado and has continued to have increasingly distressing results, without, however, any responsibility for this state of affairs resting with the I.L.O.

CONSIDERATIONS:

On the objection to the composition of the Tribunal

1. Neither the fact that two of the Judges who sat in the case previously brought by Mr. Jurado before the Administrative Tribunal and disposed of by Judgment No. 70 given by the Tribunal on 11 September 1964 have been called upon to hear a case brought by the same complainant, nor the fact that one of these Judges is of Swiss nationality and sits in the Supreme Court of his own country, can in itself be regarded as valid ground for objection to these Judges. Moreover, as Judge Armbruster is not called upon to sit in the present case, the objection to him is in any event irrelevant.

On the first submission as to substance

2. Complainant complains against the silence of the Administration on a matter in which it was not obliged to intervene, even in so far as it would have had power to do so. Hence this submission must necessarily be dismissed.

On the other submissions in the complaint

3. All the other submissions are unconnected with complainant's professional interests and consist of wild assertions, and for this reason alone must be dismissed.

DECISION:

For the above reasons,

The above complaint of Mr. Jurado is dismissed.

In witness of this judgment, delivered in public sitting in Geneva on 9 May 1967 by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

(Signed)

M. Letourneur
André Grisel
Devlin
Jacques Lemoine