

THIRTY-SECOND ORDINARY SESSION

***In re* SCHAWALDER-VRANCHEVA (No. 2)**

Judgment No. 226

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Health Organization (WHO) drawn up by Dr. Sophia Schawalder-Vrancheva on 9 July 1973, the Organization's reply of 24 September 1973 and the complainant's rejoinder of 27 October 1973;

Considering Article II, paragraph 5, of the Statute of the Tribunal and WHO Staff Rules 430, 960, 995, 1010 and 1040;

Having examined the documents in the dossier, oral proceedings having been neither requested by the parties nor ordered by the Tribunal;

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

A. By Judgment No. 194 of 13 November 1972 the Tribunal held that Dr. Vrancheva was right in asking that the impugned decision should be quashed as being based on inadequate grounds and ordered the Director-General to reopen the case and to consider, by such means as he might deem appropriate and after giving a hearing to Dr. Vrancheva, whether the appraisal by her immediate supervisor was well-founded and whether the decision not to confirm her appointment could legitimately be based on the provisions of WHO Staff Rule 960.

B. In compliance with the order of the Tribunal the Director-General set up an ad hoc committee of senior WHO officials to make inquiry and report to him. The committee held seven meetings from 19 February to 2 March 1973 and heard evidence from ten staff members or former staff members, including Dr. Vrancheva's immediate supervisor, who twice gave evidence, and Dr. Vrancheva herself. The committee's report was transmitted to the Director-General on 2 March and to Dr. Vrancheva on 8 March. Dr. Vrancheva made written comments. The inquiry having thus been completed, the Director-General decided in view of the committee's report and Dr. Vrancheva's comments to uphold his decision of 15 December 1971 not to confirm her appointment. He so informed her by letter of 12 April 1973. In the same letter he acknowledged that the proper procedure for notifying her of her performance report of 6 May 1971 had not been strictly followed in that she had not been informed in advance of the exact reasons for the decision not to confirm her appointment. Taking account of her expenses in preparing her complaint, he offered her US\$3,000 in compensation. Finally, the Director-General observed that no doubt had ever been cast on her scientific competence and that the Organization was prepared to testify to that effect if she so asked - as indeed she later did.

C. Dr. Vrancheva (who has since married and is now known as Dr. Schawalder-Vrancheva) did not accept the Director-General's offer in his letter of 12 April 1973. The present complaint is against the terms of that letter and the decision it contains.

D. In her complaint Dr. Schawalder-Vrancheva maintains, as she did in her first complaint, that the criticisms of her work were not borne out in fact and merely reflected her immediate supervisor's animosity. She contends that the Director-General's decision of 12 April 1973 was not based on any proper inquiry or adequate grounds. In its inquiry the ad hoc committee should have studied the report of 15 July 1970, which led to postponement for one year of the confirmation of her appointment, and most certainly the report of 96 May 1971, which led to her separation from the WHO. In her view the committee did not fulfil its proper supervisory function so as to ensure compliance with the Tribunal's order in Judgment No. 194. By merely repeating the comments of her immediate supervisor the committee granted an exclusive right of supervision to the very person whose own opinions should have been supervised. The Director-General's decision is not based on adequate grounds since it is impossible to determine which of the facts set out in the report of the ad hoc committee are regarded as conclusive against her. She maintains that the decision of 1973 is based on even less satisfactory grounds and is even less warranted than

that of 1971 and may therefore be regarded as arbitrary.

E. The complainant observes that she cannot now be reinstated in the WHO as she formerly wished. She therefore claims merely material and moral damages. She assesses at a total of 49,115.15 Swiss francs the material prejudice which she suffered in 1972. Considering, moreover, that she could reasonably have expected a five-year appointment and her losses will amount to not less than 40,000 Swiss francs a year from 1972, she claims payment of 40,000 Swiss francs a year for five years, plus 1,800 Swiss francs to cover the cost of typing and reproducing documents, etc. for her complaint, and 7,500 Swiss francs as lawyer's fees. Under the head of moral damages she states that the treatment she has received has tarnished her professional reputation and that such moral prejudice was seriously aggravated by a letter which the Organization sent on 24 November 1971 to Ambassador Petrov, Representative of Bulgaria to the International Organisations in Geneva, and which in her view contains unfounded criticisms of her. She assesses moral damages at her WHO salary for one year, or 63,545 Swiss francs, plus the value of the statutory allowances, or a total of 71,710 Swiss francs.

F. In summing up her claims Dr. Schawalder-Vrancheva asks the Tribunal:

"to order such rectification of her annual performance reports of 13 July 1970 and 23 May-9 August 1971 as the Tribunal shall determine;

to quash the Director-General's decision of 12 April 1973;

to order the Organization to write a letter to the Bulgarian Ambassador in Geneva correcting the letter of 24 November 1971; and

to order the Organization to pay her material damages consisting of 40,000 francs a year for five years, plus 1,800 and 7,500 francs under the head mentioned above, and moral damages amounting to 71,710 francs."

G. In its reply the Organization observes that the legal basis of the Director-General's decision of 15 December 1971, which he confirmed on 12 April 1973, was WHO Staff Rule 960, which states that "if, during an initial or extended probationary period, a staff member's performance or conduct is not satisfactory, if he is found unsuited to international service ... the appointment will not be confirmed but terminated". The Organization points out that it has never had any doubt on the complainant's scientific competence. It observes, however, that her duties were not such as she was accustomed to. Her post did not involve research or laboratory work but mainly administrative duties. She had personal, administrative and technical difficulties in her work and her performance fell short of expectations, that is why the Organization acted as it did. Despite her excellent scientific qualifications Dr. Schawalder-Vrancheva failed to adapt to international work in her relations with fellow officials and temporary members of her unit and to perform her day-to-day administrative duties. Accordingly, and in view of the outcome of the further inquiry, in the exercise of his discretionary power, the Director-General saw no reason to review his decision of 15 November 1971 and simply decided to uphold it.

H. The Organization cannot accept the complainant's claims for material and moral damages. It notes that in support of her claims for material damages the complainant expresses the view that she might reasonably have expected a five-year appointment. It points out that there was never any question of giving her an appointment for more than two years and indeed that was the period of the appointment she was offered. It was only for two years that the Director-General had asked the Bulgarian Government to release her for work with the WHO. The Organization therefore considers these claims unwarranted. It also rejects her claims for moral damages. The sole purpose of the offer of compensation amounting to \$3,000 made to her on 12 April 1973 was to prevent a souring of relations and end a "disagreeable dialogue" between her and the WHO. Since she saw fit to proceed with an appeal to the Tribunal, the offers in the Director-General's letter of 12 April 1973 no longer stand. The action it took being fully warranted, the Organization does not intend to revise in any way her performance reports or the terms of its letter of 24 November 1971 to the Permanent Representative of Bulgaria. The latter having asked for a renewal of the complainant's appointment, the Director-General had no choice but to inform him that the appointment could not be renewed and courtesy called for at least a brief explanation.

I. For all these reasons the Organization asks the Tribunal to dismiss the complaint outright.

CONSIDERATIONS:

By Judgment No. 194 of 13 November 1972 the Administrative Tribunal quashed as being based on insufficient

grounds the Director-General's decision of 15 December 1971 not to confirm the complainant's probationary appointment.

In execution of that judgment the Director-General set up an ad hoc committee to examine her case and in the light of its report took a further decision on 12 April 1973 not to confirm the complainant's appointment.

The ad hoc committee carried out a thorough inquiry into the complainant's performance during probation and the incidents which took place between her and her immediate supervisor, Dr. Outschoorn, and made a full report. On the basis of that report the Director-General took a considered decision in full knowledge of the facts.

The Organization has thus corrected the procedural irregularity which led to the quashing of the decision of 15 December 1971, and it is now for the Tribunal to determine the merits of the complaint.

As to the lawfulness of the impugned decision:

A staff member on probation may ordinarily expect to receive an appointment of indeterminate duration at the end of the probation period, the purpose of which is to determine whether he has the required qualifications. During the probation period, however, he does not enjoy the safeguards granted to permanent staff members. A decision taken by the Director-General, either during or at the end of the probation period, not to confirm the staff member's appointment is one which falls within his discretion.

In complaints against a decision of the Director-General to terminate a staff member's probation or not to confirm his appointment the Administrative Tribunal may interfere with that decision only if it was taken without authority, is irregular in form or tainted by procedural irregularities or by illegality, or is based on incorrect facts, or if essential facts have not been taken into consideration, or, again, if conclusions which are clearly false have been drawn from the documents in the dossier, or, finally, if authority has been exercised for purposes foreign to the Organization's interests.

Although the dossier as supplemented by the report on the inquiry reveals obvious animosity towards the complainant on the part of her immediate supervisor and the criticisms of her appear fairly mild, especially since she was a beginner, and cast no doubt whatever on her professional competence, it does not appear from the dossier that the impugned decision with regard to a probationer was tainted with any of the irregularities which entitle the Tribunal to interfere. Among other things it is proved that the Director-General did not merely accept Dr. Outschoorn's allegations, but took his decision on the basis of a full dossier which contained all the data required for forming a judgment and after consulting several senior officials, including the Director of the Legal Division, and in full awareness of his responsibility for the efficient running of the Organization in his charge.

As to the claim for compensation

Since the impugned decision was lawful the complainant cannot properly claim compensation on the grounds of that decision.

As to the claim for compensation, on which judgment was reserved in Judgment No. 194, the Tribunal considers that the sum of US\$3,000 offered by the Director-General in his letter of 12 April 1973 is sufficient and therefore decides to award that sum to the complainant.

DECISION:

For the above reasons,

The complaint is dismissed, subject to the payment to the complainant of the sum of US\$3,000.

In witness of this judgment by Mr Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, S C , Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Morellet, Registrar of the Tribunal

Delivered in public sitting in Geneva on 6 May 1974.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet

Updated by PFR. Approved by CC. Last update: 7 July 2000.