

## NINETY-SIXTH SESSION

(Application for Review)

Judgment No. 2323

The Administrative Tribunal,

Considering the eighth application for review of Judgment 325 filed by Mr J. V. on 30 June 2000;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

### CONSIDERATIONS

1. By Judgment 325, delivered on 21 November 1977, the Tribunal dismissed a first complaint which the complainant had filed against the World Health Organization (WHO). He has lodged an eighth application for review of that judgment.

He contends that two recent new facts show that his case "is altogether exceptional, insofar as its material facts, especially the death of millions of persons, extend far beyond simple personal dismissal".

These two new facts are:

- the closure of the Malaria Control Unit on 15 September 1999; and
- two initiatives related to the problem of the resistance of *Plasmodium falciparum* to chloroquine, namely Roll Back Malaria and the New Medicines for Malaria Venture, which was launched on 3 November 1999.

According to the complainant, these "new facts" show that his dismissal was in fact politically motivated, and that its purpose was partly to hide the Organization's responsibility as regards the cause of *Plasmodium falciparum*'s resistance to chloroquine "by eliminating the principal witness to and specialist on this resistance", namely himself, and partly to make an example of his case by showing that henceforth no opposition would be tolerated within the WHO, and particularly not from within the Malaria and Other Parasitic Diseases Division.

2. The Tribunal recalls the rulings it gave in Judgments 350 and 1947 by which it dismissed the complainant's first and seventh applications for review of Judgment 325:

"Neither the Statute nor the Rules of Court permit an application for review of a judgment of the Administrative Tribunal. The Tribunal may therefore declare such an application receivable only in quite exceptional circumstances, for example when new facts of decisive importance have come to light since the date of the judgment."

This case law is still applicable.

3. The decisions taken by the Organization, which were subsequent to Judgment 325 and on which the complainant bases his eighth application for review of that judgment, cannot constitute new facts warranting the opening of a review procedure solely on the basis of the complainant's subjective analysis.

The complainant was dismissed because he refused transfers ordered by the Director-General in the interests of the Organization. The decisions which he describes as "new facts" are not of decisive importance and cannot therefore warrant review of Judgment 325, since any official may be transferred whenever the interests of the Organization so require.

4. In maintaining that the real reasons for his dismissal were the wish to hide the Organization's responsibility as regards the cause of the resistance of *Plasmodium falciparum* to chloroquine and to make an example in order to be able to dismantle the Malaria and Other Parasitic Diseases Division unopposed, the complainant appears to complain of abuse of authority. He had already expressed the same grievance in his first complaint. At the time, the Tribunal held, in Judgment 325, that the allegation of abuse of authority was not proved. None of the facts relied upon justifies a review of that finding.

5. The complainant's arguments regarding the consequences, which he deems regrettable, of the WHO's decisions "for the millions of deaths in Asia and Africa" likewise afford no grounds for review.

6. In the light of the above the complainant's application for review must be summarily dismissed, in accordance with the provisions of Article 7 of the Rules of the Tribunal.

## DECISION

For the above reasons,

The application is dismissed.

In witness of this judgment, adopted on 19 November 2003, Mr Michel Gentot, President of the Tribunal, Mr Jean-François Egli, Judge, and Mr Seydou Ba, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 February 2004.

*(Signed)*

Michel Gentot

Jean-François Egli

Seydou Ba

Catherine Comtet