Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

*Registry's translation,
the French text alone
being authoritative.*

110th Session **Judgment No. 3001**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 2797 filed by Mr J. B. on 30 September 2009 and corrected on 9 December 2009, and on 8 and 21 January 2010;

Considering Article II, paragraph 1, of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. By Judgment 2797, delivered on 4 February 2009, the Tribunal dismissed a complaint directed in particular at the decision not to renew the last external collaboration contract between the complainant and the International Labour Organization (ILO). The Tribunal found that the defendant had not violated the rules contained in the two circulars cited by the complainant, which, in essence, define what must be understood by the term "external collaboration contract" and specify cases in which the use of this legal form of contractual relationship is prohibited.

2. The Tribunal draws attention to the fact that, according to a consistent line of precedent, pursuant to Article VI of its Statute, its judgments are "final and without appeal" and carry the authority of *res judicata.* They may therefore be reviewed only in exceptional circumstances and on strictly limited grounds. As stated in Judgments 1178, 1507, 2059, 2158 and 2736, the only admissible grounds for review are failure to take account of material facts, a material error involving no exercise of judgement, an omission to rule on a claim, or the discovery of new facts on which the complainant was unable to rely in the original proceedings. Moreover, these pleas must be likely to have a bearing on the outcome of the case. Pleas of a mistake of law, failure to admit evidence, misinterpretation of the facts or omission to rule on a plea, on the other hand, afford no grounds for review.

3. In support of his application for review, the complainant first submits that Judgment 2797 involves a breach of the general principle of law that "a court is not bound to accept the parties' description of the contractual relationship, but must take account of the true nature of the relationship between them". He thus refers implicitly to a general rule of private law set forth in Article 18 of the Swiss Federal Code of Obligations, which governs the interpretation of contracts in Switzerland, the country where the Organization has its Headquarters. According to this provision, the form and terms of a contract must be interpreted in accordance with "the actual common intention of the parties, without dwelling on inexact expressions or names which they may have used, either erroneously or in order to disguise the true nature of the agreement". In support of this criticism the complainant refers to a number of material facts which the Tribunal allegedly ignored.

This criticism is inapposite in an application for review, since the material facts mentioned by the complainant are not new facts within the meaning of the Tribunal's case law, and his argument in this respect does not establish that the Tribunal made a material error, or that it failed to take account of material facts.

Furthermore, it is clear from the judgment of which he seeks review that in reality the Tribunal did not consider itself bound to accept the formal description of the contracts concluded between the complainant and the Organization, but sought to determine their true nature.

4. The complainant also bases his application for review on the "discovery of facts [on which he] was unable to rely in the original proceedings". In this connection, he produces two statements – including one written on 23 March 2009 by a former adviser to the ILO's Branch Office in Madrid – which allegedly prove that the job description that he submitted to the Tribunal in the context of his first case was indeed that of his own job, that the directory produced by the Organization in that case had been tampered with to make it impossible to conclude from it that he had indeed been an employee of the Organization and that his professional visiting cards – which, he contends, are likewise conclusive evidence of the existence of an employment relationship – had been printed at the Organization's request.

The Tribunal finds, however, that the production of these documents does not warrant a review of Judgment 2797, either because they do not concern new facts on which the complainant was unable to rely in the original proceedings, or because they would not have had any bearing on the Tribunal's decision.

5. In view of the foregoing, the Tribunal can only dismiss the application for review in accordance with the summary procedure provided for in Article 7 of its Rules.

DECISION

For the above reasons,

The application is dismissed.

In witness of this judgment, adopted on 5 November 2010, Mr Seydou Ba, Vice-President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 2 February 2011.

Seydou Ba
Claude Rouiller
Patrick Frydman
Catherine Comtet