

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**K.**

**v.**

**ITU**

(Application for review)

**134th Session**

**Judgment No. 4569**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 4440 filed by Mr E. K. on 15 December 2021;

Considering Articles II, paragraph 5, and VI, paragraph 1, of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

#### CONSIDERATIONS

1. The complainant is a former staff member of the International Telecommunication Union (ITU). He has filed an application with the Tribunal for review of Judgment 4440, delivered in public on 7 July 2021, in which the Tribunal dismissed his application for review of Judgment 4370 concerning his first complaint, in which he challenged ITU's decision to retire him as from 31 July 2017.

2. As the Tribunal reminded the complainant in consideration 2 of Judgment 4440:

“[P]ursuant to Article VI of its Statute, the Tribunal's judgments are ‘final and without appeal’ and have *res judicata* authority. They may therefore be reviewed only in exceptional circumstances and on strictly limited grounds. As stated, for example, 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 which the complainant was unable to rely on 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 (see, for example, Judgments 3001, [consideration] 2, 3452, [consideration] 2, and 3473, [consideration] 3).”

3. The complainant, who submits that Judgments 4370 and 4440 are “centred” on a “virtual complaint”, which is a “virtual challenge” to the supposed decision of 20 November 2017 rejecting the internal appeal which he had lodged against the decision to retire him, contends first of all that the Tribunal failed to take account of material facts relating to that decision. He states, as he has already done in the application for interpretation that is the subject of Judgment 4567, also delivered in public today, that the Tribunal wrongly considered that the impugned decision was the decision of 20 November 2017. He submits that this was simply a letter of notification which he never challenged either in the internal appeal procedure or before the Tribunal. However, as stated in consideration 6 of today’s Judgment 4567, the Tribunal was rightly regarded this letter as the decision impugned by the complainant in his first complaint.

4. The complainant further submits that the Tribunal committed several material errors or perpetrated various “falsification[s]”, whether in relation to one of his submissions, the subject of the letter of 20 November 2017 or a legal rule and that it also “omitted to decide on” his first complaint – the subject of Judgment 4370 – and the application for review of that judgment – the subject of Judgment 4440. In so doing, the complainant simply challenges the legal assessments made by the Tribunal in the two judgments in question, as he has already done in his application for review of Judgment 4370. However, these may not be challenged in an application for review (see Judgment 4440, consideration 4).

5. Furthermore, the complainant submits that the Tribunal omitted to rule on three of the claims made in his application for review of Judgment 4370 and on the three claims to which he drew particular attention in his first complaint. However, here the complainant is in fact referring to pleas that he entered in his submissions and not to claims. As the Tribunal recalled in consideration 2 above, an omission to rule on a plea does not, in any event, constitute a receivable ground for review.

6. It ensues from the foregoing that the complainant's application for review is clearly irreceivable and must therefore be summarily dismissed in accordance with the procedure provided for in Article 7 of the Rules of the Tribunal.

#### DECISION

For the above reasons,

The application for review is dismissed.

In witness of this judgment, adopted on 12 May 2022, Mr Patrick Frydman, Vice-President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 6 July 2022 by video recording posted on the Tribunal's Internet page.

*(Signed)*

PATRICK FRYDMAN    JACQUES JAUMOTTE    CLÉMENT GASCON

DRAŽEN PETROVIĆ