

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**T. (No. 4)**

**v.**

**IOM**

(Application for review)

**136th Session**

**Judgment No. 4736**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 4571 filed by Ms C. T. on 8 November 2022;

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, represented by her counsel, has filed an application for review of Judgment 4571, delivered in public on 6 July 2022, in which the Tribunal summarily dismissed her fourth complaint against the International Organization for Migration (IOM) on the basis that it was not directed against a final decision.

2. In her pleadings, she specifically requests that the present application be assigned to new judges who were not part of the panel that adopted Judgment 4571. However, the request will not be granted for the reasons explained by the Tribunal in recent Judgments 4584, consideration 2, and 4520, consideration 1, regarding similar requests.

3. The complainant also challenges the proposal of the Tribunal's Vice-President to adjudicate her case leading to Judgment 4571 according to the summary procedure and charges the Tribunal's Registrar with bias and prejudice towards her. The plea against the Vice-President is irreceivable as no appeal lies from procedural decisions taken by the President of the Tribunal or by any other authority thereof in exercise of the authority granted to them under the Tribunal's Statute and Rules (see Judgment 4541, consideration 2). Moreover, the Vice-President's proposal is merely a preparatory procedural step and, pursuant to Article 7, paragraph 2, of the Rules, it is for the panel in charge with the examination of a case to decide whether the use of the summary procedure is appropriate. As to the charges against the Registrar, he does not, in any event, adjudicate cases. It is the Tribunal which decided itself, autonomously and independently, the way it had to deal with the case.

4. As the Tribunal recalled, for example, 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).”

5. In support of her application, the complainant submits that the Tribunal failed to take account of material facts, committed material errors and omitted to rule on a certain number of claims. Moreover, she asserts that she discovered new facts on which she was unable to rely in the original proceedings.

6. As regards, first of all, the alleged failure to take account of material facts, the complainant submits that the Tribunal came to the wrong conclusion in considering that the decision which was impugned in her fourth complaint was not a final one challengeable under Article VII, paragraph 1, of its Statute. She asserts that the Tribunal relied on wrong legal provisions, made a poor interpretation of the wording of the decision in question, omitted to consider that she had lodged a prior request for review and did not take into consideration IOM's refusal to follow the procedures established for the internal appeal process.

By those arguments, the complainant is in fact simply alleging that the Tribunal incorrectly appraised the facts in question. Such arguments do not constitute admissible grounds for review (see Judgments 4440, consideration 5, and 3983, consideration 6).

7. The complainant next submits that the Tribunal committed material errors and reiterates in substance, in this regard, the arguments listed in consideration 6 above. The Tribunal finds that those arguments do not relate to material errors, but are solely an attempt to challenge the view taken by it in Judgment 4571. The legal assessments made by the Tribunal in a judgment cannot be challenged in an application for review (see Judgments 4440, consideration 4, and 3984, consideration 5).

8. The complainant further submits that the Tribunal omitted to rule on three of her claims, but she is in fact referring to the pleas that she raised in her fourth complaint. As indicated in consideration 4 above, the omission to rule on a plea is not an admissible ground for review (see the case law cited in that consideration). Moreover, there was no need for the Tribunal to address in its judgment each of the complainant's pleas since the complaint was irreceivable.

9. Lastly, the complainant relies on alleged "new and exceptional facts". She asserts that all of her internal appeals lodged before the Joint Administrative Review Board have been "frozen" and condemns IOM's attitude with regard to her rights. Though the discovery of a new fact may indeed afford grounds for review, the fact must date from before the judgment and be such as would have affected

the ruling had the Tribunal known of it in time (see Judgments 4440, consideration 8, and 1545, consideration 5). The arguments presented in this regard do not constitute new facts within the meaning of the case law referred to above.

10. The complainant's additional pleas do not constitute admissible grounds for review and, thus, should be rejected.

11. The Tribunal concludes that, as the complainant is essentially confining herself in revisiting arguments advanced unsuccessfully in her fourth complaint and expressing disagreement with the Tribunal's appraisal of the evidence and interpretation of the law, her application for review is in fact a mere attempt to reopen issues already settled in the original judgment (see, for similar cases, Judgments 4122, consideration 7, and 3897, consideration 4). The matters raised are *res judicata* and she puts forward no legitimate ground to reopen the findings made by the Tribunal in the original judgment (see Judgments 4440, consideration 7, and 3479, consideration 6).

12. It follows from all the foregoing that the complainant's application for review is clearly devoid of merit and must 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 25 May 2023, Mr Michael F. Moore, President of the Tribunal, Mr Patrick Frydman, Vice-President of the Tribunal, and Ms Hongyu Shen, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 July 2023 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

PATRICK FRYDMAN

HONGYU SHEN

DRAŽEN PETROVIĆ