

THE ILO ADMINISTRATIVE TRIBUNAL

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Created in 1927 and wound up in 1946, the League of Nations left a legacy of which few, if any, of the nations that comprised it could be proud. One institution, however, which formed part of the League, had obviously functioned with some efficiency throughout the League's existence: it was its Administrative Tribunal. In addition to serving the League itself, the Tribunal also served the International Labour Organization which had been in existence since 1919. One positive part of the legacy of the League was to preserve the Tribunal and transfer it, in 1946, to the ILO which became a specialized agency of the newly created United Nations Organization. The ILO, which had been established to define and protect the rights of workers, was the logical destination for the Tribunal whose mandate was to provide guarantees that the officials employed by the institutions over which it had jurisdiction at that time, viz. the League and the ILO, would enjoy protection against arbitrary or unfair acts committed against them by their employer.

It is perhaps somewhat unfortunate that, although its archives have been preserved, not much has been written about the functioning of the Tribunal during the existence of the League. It is known, however, that, at the time of the transfer to the ILO the Tribunal had dealt with 37 cases. Between January 1929 and August 1939 it dealt with 21 cases in eight separate sessions. In a final session in February 1946 it dealt with the remaining 16 cases, making up the total of 37 at the time of the transfer. Article III of the Tribunal's Statute provided that the Tribunal would comprise three titular judges and three deputy

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judges. The same judges were reappointed as judges of the ILO Administrative Tribunal and the International Labour Conference adopted a new Statute for it which differed little from the Statute that had been adopted by the League, except for the important addition of Article XII providing for possible reference to the International Court of Justice in certain cases and circumstances.

At the 32nd Session of the International Labour Conference (1949), Article II of the Statute of the ILO Tribunal was amended to permit other international organizations that were approved by the ILO's Governing Body to recognize the jurisdiction of the Tribunal to consider complaints alleging the non-observance, in substance or in form, of the terms of appointment of officials, or of the provisions of the Staff Regulations of those organizations. This amendment permitted the World Health Organization (WHO), a specialized agency of the UN, which had initially contemplated setting up its own tribunal, to be the first such organization to recognize the jurisdiction of the ILO Administrative Tribunal, which it did by a formal declaration made on 19 July 1949. The stated intention of the WHO was to make temporary use of the ILO Tribunal until definite arrangements could be made with the United Nations which, at that time, had not yet established its own tribunal. The acceptance of the ILO Tribunal's jurisdiction, however, remained permanent. The adherence of WHO was followed, in May and June 1953 respectively, by the acceptance of the Tribunal's jurisdiction by the International Telecommunications Union (ITU) and the United Nations Educational, Scientific and Cultural Organization (UNESCO) and by the World Meteorological Organization (WMO) in October of the same year. Interestingly, UNESCO formally renewed its adherence every two years up to 1965 and has renewed it since then at five-yearly intervals. The Food and Agricultural Organizations of the United Nations (FAO) recognized the jurisdiction of the Tribunal in December 1953 with retroactive effect to July 1952.

There can be little doubt that the acceptance of the Statute of the ILO Administrative Tribunal by these major specialized agencies of the UN system was instrumental in bringing other UN agencies within the fold of the Tribunal's jurisdiction. The question of costs was also important since adhering to an already existing tribunal, where expenses would be shared, was considerably cheaper than establishing and running individual tribunals for each organization. Noteworthy indeed is that, as at January 2009, the jurisdiction of the ILO Administrative Tribunal was recognized by no fewer than 58 organizations comprising 12 specialized agencies of the United Nations, including the ILO, and four related UN organizations, as well as 42 organizations outside the UN system, thereby providing access to the Tribunal for some 46,000 officials. This is clear testimony of the prestige in which the Tribunal is held generally as well as a sign of the confidence of those organizations, not to mention their staff associations and unions, in the capacity of the Tribunal to deal with complaints with objectivity and competence.

To date the Tribunal has dealt with more than 2 800 cases and, with the ever-increasing number of complaints being brought to its attention, this is causing considerable strain on the Tribunal's resources. The seven titular judges who now make up the Tribunal between them consider around fifty cases at each of the Tribunal's two sessions per year. The Tribunal is serviced by a Registry, the composition of which (a Registrar, an Assistant Registrar and a small team of legal officers) has not changed much over the years. The ILO retained the power of appointing the Registrar and the International Labour Conference the power of appointing the judges on the recommendation of the Governing Body. While it has always been a matter of policy to observe a reasonable geographical distribution in the selection of judges, it has always been the practice to select judges of the highest calibre from the supreme courts in the countries from

which they come, and whose impartiality and objectivity are beyond question. As in the case of the Statute of the League of Nations Administrative Tribunal, the only requirement for judges in the Statute of the Tribunal is that they should all be of different nationalities.

By its very nature and mandate the ILO has access to legal institutions in many countries as well as to international associations of practicing labour lawyers, academics and judges. This probably makes the identification of appropriately qualified judges an easier task for the ILO than it would be for other organizations. Indeed, the absence of any criticism of the manner in which judges are appointed or their mandates renewed would indicate that the organizations recognizing the jurisdiction of the Tribunal are generally satisfied with the care and objectivity with which the ILO carries out this task. Another reason for satisfaction may perhaps be that the ILO has been able to avoid the political factors that have had an important influence not only on the appointment of judges to the UN Administrative Tribunal but also on the UN Tribunal itself.² The renewal of individual mandates of the judges, which is in no way automatic, also guarantees a degree of continuity as well as a more solid knowledge of the procedures and the jurisprudence on the part of the members of the Tribunal. The appointment of the Registrar is now made following an open call for candidatures, written examination and an interview by a panel of experts chaired by the President of the Tribunal who, unlike the other judges, is closely involved in the day-to-day business of the Registry.

In this article I should like to concentrate on what the Tribunal is, the manner in which it operates at present and on some of the most important developments that have contributed

² See on this question Pierre Pescatore in "Two Tribunals and One Court", Essays in honour of Henry G. Schermers, Vol. I, 1994, p. 220.

to the evolution of the procedures of the Tribunal and its jurisprudence or case law. To deal with these matters comprehensively would necessitate a much longer article than this one. The issues I shall mention, therefore, are selective but, hopefully, will provide some useful information and contribute to a wider and better understanding of the work of the Tribunal and what it endeavours to achieve.

I. THE NATURE OF THE TRIBUNAL

In view of the confusion that sometimes arises in the minds of lawyers from different jurisdictions, as well as others, concerning the nature of the Tribunal it is useful to explain that it is neither a criminal nor a civil court of law; nor is it a court of human rights. It is an *administrative* Tribunal. Its purpose, according to its Statute, is to examine complaints by officials that the rules and regulations governing their employment relationship have been applied unfairly to them or have been ignored, and to ensure that administrations are appropriately brought to book for any abuse of authority or arbitrariness in the application of such rules and regulations. Naturally, in its examination of cases, the Tribunal will have due regard to the principles of natural justice and to the rules of due process. It will even take account of such principles of international law such as those contained in the relevant core standards of the ILO (freedom of association, freedom from discrimination, equality of opportunity and treatment, etc). But, as an administrative tribunal, it is not bound by any principles of law or procedures that have been developed by, and are adhered to in any particular system of law. It is true to say, however, that both the highly developed system of French administrative law and the common law system have had a major influence on the jurisprudence of the ILO Administrative Tribunal as well as on the style in which its judgments are formulated.

The Tribunal is an appellate body to which complaints can only be made after all the internal remedies, including appeals procedures, available to the official concerned under the Staff Rules and Regulations applicable in the organization against which the complaint may be brought, have been fully exhausted and when a final decision has been taken by, or on behalf of the executive head of that organization. Judgments of the Administrative Tribunal are final in nature and this has been recognized by the International Court of Justice (ICJ) from which the governing bodies of organizations recognizing the jurisdiction of the Tribunal may request an advisory opinion if they challenge a decision of the Tribunal concerning its jurisdiction, or if they consider that a decision of the Tribunal has been vitiated by a fundamental fault in the procedure followed.³ In terms of the Tribunal's Statute, reference to the ICJ may only be made by those organizations that have accepted the Tribunal's jurisdiction. Here, two points may be made. The first is that organizations that are successful in cases before the Tribunal obviously will have no need to refer the Tribunal's decision to the ICJ; the second is that, in cases where organizations are unsuccessful, and do not refer the decision to the Court, this is an indication of their willingness to accept the Tribunal's decisions and to execute them. This is borne out by the fact that no reference has been made to the ICJ since 1954 and by the fact that, in practice, organizations have never failed to execute the Tribunal's judgments, even if sometimes tardily.⁴ It should also be noted that, in the UNESCO case in 1956, while the ICJ did confirm the competence of the ILO Tribunal to entertain such

³ See Article XII of the Statute of the Tribunal. Up to the present, only UNESCO has made use of this procedure when it asked for an advisory opinion on the validity of judgements Nos.17 (Leff), 18 (Duberg), and 19 (Wilcox) dated 26 April 1955, and No. 21 (Bernstein) dated 29 October 1955. ICJ, Judgments of the ILOAT on complaints made against UNESCO. Advisory opinion dated 23 October, *Reports of Judgements*, 1956, p. 77.

⁴ See p. 33.

cases and formally validated the judgments it had handed down, nonetheless the decision of the Court was a highly complex one and was even accompanied by dissenting opinions expressed by no fewer than seven of the judges, which did not add clarity to the decision. This was hardly an encouragement to organizations to seek advisory opinions from the Court. Again, it is of some significance that in a later case before the ICJ, this time involving a judgment of the UN Tribunal, one judge (Roberto Ago), referring to the role of the ICJ as being the settlement of international legal disputes between states, suggested that the Court was ill-suited to carry out functions in the field of international administrative law. These factors add weight to the importance of the judgments of the Tribunal and their finality. They also serve to emphasise the considerable responsibility the Tribunal has in reaching its decisions.

II. PROCEEDINGS BEFORE THE TRIBUNAL

1. Access to the Tribunal

The Tribunal is competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of the Staff Regulations of the organizations which have recognized the jurisdiction of the Tribunal (Article II of the Statute). The Tribunal is also open to the official even if his/her employment has ceased, and to any person on whom the official's rights have devolved on his/her death (Article II, paragraph 6(a), of the Statute); or to any other person who can show that he/she is entitled to some right under the terms of appointment of a deceased official or under the provisions of the Staff Regulations on which the official could rely (paragraph 6(b)).

a) *The definition of “official”*

The basic characteristics of an official were defined in the earliest cases dealt with by the Tribunal as a person who has a contractual relationship with an organization and who is subordinated to the rules and regulations of the organization and to the authority of its executive head.⁵ An employment relationship is, therefore, fundamental before a person can seek access to the Tribunal. In other words, no-one can be an official of an organization without being employed by it.

There have been cases, however, in which, even if a person has not been appointed to a post, it has been shown that a contractual relationship does exist between the parties, thus opening the door of access to the Tribunal if the terms of that relationship are contested. In Judgment 307, for example, the Tribunal found that it was competent to examine a dispute submitted to it by a complainant who, even without being appointed to a post in an international organization, was covered by a “binding contract”. In that case the Tribunal found that:

“There is a binding contract if there is manifest on both sides an intention to contract and if all the essential terms have been settled and if all that remains to be done is a formality which requires no further agreement.” (Under 5.)

Similarly, in another case (Judgment 339), the Tribunal found that, where the complainant establishes the existence of a binding contract of appointment with the organization, but if there is a dispute about the matter, it is a dispute which the Tribunal is competent to determine. In Judgment 621 it said that, for a contract to arise, there has to be “an unquestioned and unqualified concordance of will on all terms of the relationship”, in the sense that both parties have shown contractual intent, all

⁵ See Judgments Nos 11, 61, 323 and 339.

the essential terms have been worked out and agreed on, and all that remains to be settled is a formality requiring no further agreement. In a more recent case, however, the Tribunal clarified that there must be a 'demonstrable intent' on the part of an organization to enter into a contractual relationship with the person concerned (Judgment 2382).

Another case is illustrative of circumstances in which the Tribunal has not accepted that the criteria for the kind of contractual relationship referred to above have been met. Judgment 1964 concerned a case where a post had been offered to the complainant subject to his complying with the requirements of the Service Regulations, which provided that a candidate should produce certain certificates as well as meet the physical requirements of the post as verified by an initial medical examination. When the medical adviser was unable to certify him fit to perform the duties of the post, the offer of employment was withdrawn. His appeal to the Tribunal claiming that he was covered by a binding contract was contested by the organization since, in its view, the complainant had not been granted the status of employee and his contract of employment was subject to a condition which in the end was not fulfilled. Although the Tribunal did acknowledge in the case in question that it is within its competence to determine whether or not there is a contract of appointment by which the parties are bound and which would give the official concerned access to the Tribunal, it did not accept the complainant's arguments on the grounds that the agreement to appoint him was subject to the fulfilment of a condition which could not be said to be a mere formality, namely, recognition that he was physically fit to discharge his functions. The complainant had consequently not been appointed as an employee of the organization and was therefore raising a matter which was not within the Tribunal's competence.

In other recent cases where the complainants contended that, under national law, there was no doubt that, although they were providing services to the Organization through various temporary employment agencies, it was the Organization that was their true employer, the Tribunal held that it will not apply the national law of a state, save where there is an express reference thereto in the organization's Staff Regulations or in contracts of employment it has entered into; it ruled that the complainants, having produced no employment contract between them and the Organization, the Tribunal had no jurisdiction to hear their case (see Judgments 2503, 2504 and 2505).

The situation may be less clear, however, when the official has links with more than one organization. This is the case, for example, when the services of an official are lent to another organization or where an official is detached from his/her organization in order to perform, on a temporary basis, services for another organization. In such cases, the officials concerned may formulate, during the period of detachment, complaints not only against their organization in order to defend their interests but also against the organization to which they have been detached if a dispute should arise concerning the terms and conditions of their employment with that organization, provided of course that the latter organization has accepted the jurisdiction of the Tribunal. Cases frequently arise where officials are detached from their national administrations to work for specified periods with international organizations. Here again, such officials have the right of access to the Tribunal if they allege breach of the terms and conditions of their employment with that organization, but provided that the international organization has not initially informed the national administration or agency that it does not recognize detached officials as members of its staff (see Judgment 231).

The situation may also be problematic where special types of contract have been established and where the type of relationship between the person concerned and the organization is not entirely clear. Significantly, the Statute of the Tribunal uses the term “official” and the question that must always be asked therefore is whether the contractual or employment relationship which a person has with an organization brings him/her within the category of “officials” of the organization, thereby bestowing on them the right of access to the Tribunal in the event of a dispute. In cases where the right of access is in dispute, the Tribunal has always adopted a pragmatic approach, having regard mainly to the provisions of the internal Rules and Regulations of the organization and the terms and conditions contained in the contract that has been concluded between the parties. The Tribunal has accordingly established a number of criteria in its jurisprudence by which the status of “official” may be identified.

Briefly, the Tribunal has considered receivable, for example, complaints brought by employees of subsidiary or external offices of an organization on the grounds that such persons had “the essential characteristics of an official” and stated, with some solemnity, that it had the necessary authority to ensure the security of employment of all the officials who were dependent on the organization (see Judgments 11 and 30). These judgments established the basic rule that any person who fulfils the essential characteristics of an official (permanently in service to the organization that employs him/her, subject to the authority of the executive head, unilaterally established conditions of employment, accessibility to pension and health benefits etc.) has the right of access to the Tribunal. In another early case (Judgment 122), the Tribunal emphasized that:

“While the Staff Regulations of any organisation are, as a whole, applicable only to those categories of persons expressly specified therein, some of their provisions are

merely the translation into written form of general principles of international civil service law; these principles correspond [...] to such evident needs and are recognised so generally that they must be considered applicable to any employees having any link other than a purely casual one with a given organisation, and consequently may not lawfully be ignored in individual contracts. This applies in particular to the principle that any employee is entitled in the event of a dispute with his employer to the safeguard of some appeals procedure.”

The Tribunal has also established that, provided that the person concerned fulfils the qualifications to make him/her ‘an official’ of the organization the right of access to it in no way depends upon the length of his/her appointment. Therefore, every official who has a permanent or a fixed-term appointment may seize the Tribunal. Likewise, any staff with a temporary appointment enjoying the same conditions of employment as the Organization’s own officials may seize the Tribunal. This applies to officials employed either on a full-time or a part-time basis. It is only those persons who have casual employment with the organization in question who do not have right of access to the Tribunal. The Staff Regulations do not apply to this category of workers whose legal situation is determined by contracts which state that the person concerned does not have the status of an official and consequently has no access to the Tribunal (see Judgments 67 and 122).

b) Special cases

The right of access to the Tribunal does not depend on the rank of the official concerned but only on whether he/she is covered by the Staff Regulations of the organization. Over the years a number of cases have been brought to the attention of the Tribunal by high-level officials of organizations, such as Deputy or Assistant Directors-General, even to the Tribunal of the

League of Nations (Judgment 2)⁶. The situation of an executive head, however, is rather more complex. His/her functions are of a political as well as an administrative nature and his/her status will depend, at least to some extent, on the treaty or Constitution establishing the organization itself. In one case (Judgment 580) the Tribunal was reluctant to make a pronouncement as to whether or not the Director-General of the organization concerned was a member of the staff.

However, in a rather recent case (Judgment 2232) the Tribunal decided that it could deal with the complaint submitted by the Director-General of an organization on the grounds that in terms of the Organization's Staff Regulations and Rules, "the Director-General, like other staff members, [was] clearly deemed to have the status of an international civil servant". The facts of the case may be summarized as follows: under the terms of the constituting document of the defendant organization, the Director-General was appointed by the Conference upon the recommendation of the Executive Council for a term of four years, renewable for one further term, but not thereafter. The contractual terms and conditions were essentially those stipulated in an existing Executive Council decision. Under pressure by one member State the Conference took a decision to remove the Director-General from office some three years before his contract was due to expire. He lodged a complaint with the Tribunal. The defendant organization argued that the complainant was not a "staff member" within the meaning of the Staff Regulations, and that the decision he was impugning was not an administrative, but a political one taken in a political context by the highest legislative and political body of the organization. In its judgment the Tribunal held that the complainant was clearly an "official" within the meaning of the Statute of the Tribunal. In his capacity as head of the Technical

⁶ Phelan v. ILO

Secretariat he was in fact the foremost “official” of the Organization. It was also clear that at the time of signing the Headquarters Agreement between the Organization and the country in which it was situated the word “officials”, in standard usage, was considered by the Organization to include the Director-General. Even if his contract contained no express provision attributing jurisdiction in the event of a dispute, this fact did not mean that the jurisdiction of the Tribunal could be excluded.

Having thus established the Tribunal’s jurisdiction *ratione personae*, the Tribunal examined the defendant Organization’s plea that the decision impugned was not an administrative but essentially a political one. To this argument the Tribunal responded that a decision terminating the appointment of an international civil servant prior to the expiry of his/her term of office is an administrative decision, even if it is based on political considerations. The fact that it emanated from the Organization’s highest body did not exempt it from the necessary review applying to all individual decisions which are alleged to be in breach of the terms of an appointment or contract, or of statutory provisions. The internal appeal procedures being entirely inappropriate in this case, a direct appeal to the Tribunal was the only remedy available to the complainant. Hence the complaint was receivable.

As for the political motivation for the decision to remove the Director-General from office, the Tribunal, in all the circumstances, emphatically reaffirmed that:

“the independence of international civil servants is an essential guarantee, not only for the civil servants themselves, but also for the proper functioning of international organisations. In the case of heads of organisations, that independence is protected, inter alia, by the fact that they are appointed for a limited term of office.

To concede that the authority in which the power of appointment is vested – in this case the Conference of the States Parties of the Organisation – may terminate that appointment in its unfettered discretion, would constitute an unacceptable violation of the principles on which international organisations’ activities are founded [...] by rendering officials vulnerable to pressures and to political change.”

The Tribunal concluded that the complainant had good grounds for asserting that the premature termination of his appointment violated the terms of his contract of employment and contravened the general principles of the law of the international civil service. The complainant was awarded substantial material and moral damages, as well as costs.

c) Former officials

Article II, paragraph 6(a), of the Tribunal’s Statute states clearly that the Tribunal shall be open “to the official, even if his employment has ceased, and to any person on whom the official’s rights have devolved on his death”. In the case of cessation of employment this means anyone who was an official of an international organization but whose functions have come to an end for one of the reasons provided for in the Staff Regulations, that is to say, retirement, resignation, non-renewal of contract or dismissal. For a complaint submitted by a former official, it must – in addition to complying with the general rules on receivability – be based on acts or events which took place during the employment of the complainant or after the cessation of service but which have a retroactive effect going back to the period during which he/she was employed and which relate to the provisions or principles governing the staff of the organization (see Judgments 661 and 772). For example, according to the case law, a former official has the right to demand a work certificate to which he/she is entitled under the

Staff Regulations. The Tribunal has stated that when an official's service comes to an end, he/she has the right after cessation, just as during the period of his/her employment, to the application of the Staff Regulations (see Judgment 509). On the other hand, a former official cannot claim damages for acts that have occurred subsequent to the date on which cessation of service took place. The same is the case if the complainant is unable to demonstrate that his/her claim relates to the functions he/she held as an official (see Judgment 661).

d) Persons having legal rights

In the case of persons on whom the official's rights have devolved on his/her death (Art. II, paragraph 6(a), of the Statute), or "any other person who can show that he is entitled to some right under the terms of appointment of a deceased official or under the provisions of the Staff Regulations on which the official could rely" (Art. II, paragraph 6(b), of the Statute), despite the complexities of international private law to which these provisions may have given rise, there have, in fact, been relatively few cases of this kind brought before the Tribunal and most have been straightforward. The receivability of a complaint submitted by a person who claims that he/she is entitled to some right on the death of an official is subject to two conditions: first, the person must prove that the deceased was an official in the same sense as described above; second, the complainant must prove that the rights of the deceased have devolved upon him/her on the death of the official, or must show that he/she is entitled to some right under the terms of appointment of a deceased official or under the provisions of the Staff Regulations on which the official could rely. Unless the deceased has formally, in terms of the Staff Regulations, designated the persons who will be entitled to receive sums due to him/her on death, the heirs and successors will normally be the surviving spouse and the children of the deceased. In view of the complexities of, and differences

between the law of succession in different countries the Tribunal, in the event of a dispute among possible successors of the deceased, will expect that such dispute be settled by the competent national courts.

e) Contractors

Before completing this brief description of those who may have access to the Tribunal, it is necessary to mention another category of persons who may have access thereto by virtue of Article II, paragraph 4, of its Statute which reads:

“The Tribunal shall be competent to hear disputes arising out of contracts to which the International Labour Organization is a party and which provide for the competence of the Tribunal in any case of dispute with regard to their execution.”

This provision extends the competence of the Tribunal to disputes between the organization and contractors who have no access under paragraph 6 of the same Article II and have no work relationship with the organization. Contrary to the right of access that is enjoyed by officials and others already described which arises from the internal regulations of the organization as well as the Statute of the Tribunal, the basis for the procedure provided for in paragraph 4 of the same article is the consent of the parties. For this procedure to be engaged three conditions must be fulfilled: first, the organization concerned must be a party to the contract (see Judgments 803 and 967); second, both parties must accept the competence of the Tribunal either by expressly stating this in the contract itself and agreeing therein to submit to the Tribunal all disputes that might arise in connection with the execution of the contract, or by jointly consenting to the referral of disputes to the Tribunal otherwise than in the contract itself (see Judgment 967); and third, the parties must refer their dispute to the Tribunal as a whole and not to any particular judge

thereof. It is also by virtue of paragraph 4 of Article II that persons who provide occasional services to the organization, such as external collaborators, experts, interpreters on daily contracts, may refer complaints to the Tribunal. Needless to say, the rules of procedure in such cases are not the same as for complaints submitted by officials, in particular as regards the requirement of exhausting internal procedures, but the other time limits specified in the Tribunal's Statute are applicable (see Judgment 1052).

2. The impugned decision

A complaint is receivable only if it is brought against an administrative decision that is explicit or, exceptionally, implicit. An administrative decision is one that has been taken unilaterally by the administration vis-à-vis an official and which has legal consequences for him. Such decision must be an individual decision that affects the official concerned (see Judgment 1393), who may however also challenge the general one that it implements (Judgment 1840, under 2). In international organizations the person who is normally empowered to take "final" decisions is the executive head, Secretary- or Director-General, but he/she can delegate this power to another official who may be his/her Deputy, or the Director of Personnel (see Judgments 805 and 986). If there is any dispute regarding the competence of the person taking the administrative decision, the burden is on the organization to show that the person who took the decision was competent or that he/she acted with delegated authority in accordance with the rules in place (see Judgment 869).⁷

In accordance with Article VII(4) of the Statute, a complaint has no suspension effect (see Judgment 1584, under 6).

⁷ On the issue of delegation of authority, see also Judgments 1560, 1757 and 1779.

An administrative decision which is explicit is one that clearly expresses what the administration intends to do. It can be written or oral (see, for example, Judgments 50 and 1012) and must have legal consequences for the person concerned. A decision that is implicit is one that is taken as a result of the silence or non-action of the administration. In other words, when the administration fails to respond within a certain period of time to a claim by an official, its silence is construed as being a rejection of the claim.

- Under Article VII, paragraph 1, of the Statute:

“A complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations.”

The exhaustion of all internal appeal procedures is a prior condition for any complaint to be receivable and the jurisprudence of the Tribunal shows that this rule has always been strictly applied (see, for example, Judgment 775). The rule is a useful one insofar as it enables the final decision of the Director-General to be taken in full knowledge of the facts of a case and normally after the case has been examined in detail by a joint body consisting of members of the administration and staff representatives. It also enables an internal solution to be found to the complaint that has been made. Moreover, if the case does come before the Tribunal, the latter will have the benefit of having before it the complete examination of the case that has been undertaken by the appeals body, a body that is considerably more acquainted with personnel issues within the organization than the Tribunal. However, the Tribunal will not re-do the work of the appeals body; its task is to determine whether the decision taken on the recommendation of this body is a lawful one.

By the “exhaustion of all internal procedures” is meant the use of all the legal channels that are open to an official within the

rules of the organization before a final decision is taken. Normally, the Staff Regulations will provide for compulsory appeals procedures but in addition there may be less formal procedures available (such as the services of a conciliator, or a mediator or an ombudsperson) in order to reach an amicable settlement of the problem. The official concerned must fully respect the rules of procedure and the time limits set out in the Staff Regulations of the organization. If the official does not, he/she takes the risk of having his/her complaint dismissed by the Tribunal as irreceivable (see, in particular, Judgment 840). The Tribunal will also have regard to all aspects of the internal procedures to ensure that they guarantee due process and that they are not tainted with illegality or errors of fact (see Judgment 946). The Tribunal is in no way bound by the opinions or the recommendations of the internal joint appeals bodies to which claims are normally referred, but, as indicated above, their reports will be closely scrutinized by the Tribunal in its examination of any complaint. The final decision taken by the executive head following the exhaustion of all internal procedures will fix the limits within which the complaint can be brought to the Tribunal. Any matter that has not been dealt with by internal bodies must be excluded from the complaint. The Tribunal has pointed out that, when the internal body makes a recommendation which is favourable to the complainant and the executive head decides not to follow that recommendation, the decision must be fully and adequately motivated (see Judgments 2092, 2261, 2347 and 2445).

The Tribunal has described its function regarding receivability as follows: it is to do justice between the parties according to the merits of the case but subject to the rules of procedure by which it is governed. The rules as to receivability, which are procedural rules, are designed to protect the organisation against what might be a greater injustice to it if access to the Tribunal was totally unrestricted. While it is

generally to be expected that an organisation will lay its whole case on the merits before the appeals body so as to enable that body to give the best and most complete advice to the decision-making authority, its omission to take a particular point will not as a general rule prevent the consideration of that point by the Tribunal. This is because it is the duty of the Tribunal to arrive in so far as it can at a just decision on all the merits. If, however, the failure of the organisation does not go to the merits but is a failure to take advantage at the appropriate time of a procedural provision framed for its benefit, the position is not the same. There can be no doubt that the appropriate, if not the only, time to take the point was before the appeals body, since it is the proceedings before that body that are said to be for instance out of time (with the result that the complainant failed to exhaust his internal remedies) and not the proceedings before the Tribunal itself. The Tribunal has therefore to consider whether or not justice requires that the Organization should be given a second opportunity to take the point. Three factors ought to be considered. The first is whether the point is a clear and compelling one. The second is whether there is an adequate explanation of the Organization's failure to take it. The third is whether the complainant may be prejudiced by the Organization's failure (see Judgment 522, under 18).

According to the rule requiring exhaustion of the internal means of redress, as stated in Article VII, paragraph 1, of the Statute of the Tribunal, a complaint is not receivable unless the staff member has exhausted the means of resisting it which are open to him within the organisation. As the Tribunal has indicated in its case law, this rule means, first, that the complaint to the Tribunal must rely on the same essential facts, that is issues, as those relied on in the internal appeal proceedings and, secondly, that the complainant's claims must not exceed in scope the claims he submitted in those proceedings. There is nothing, however, to prevent him from making submissions which he did

not make in the internal proceedings, in other words there is no need for the pleas submitted to the Tribunal to have been put to the internal bodies. Since the Tribunal will apply the law *proprio motu*, there is no reason to forbid the complainant to draw to its attention considerations which it may take into account of its own accord (see Judgment 435, under 1).

Although a complainant may put forward a new plea at any point in proceedings before the Tribunal, he may not in his rejoinder enlarge the scope of his claims as stated in his original complaint (see Judgment 960, under 8). A complainant does not, merely by developing the case he put to the internal bodies, alter the scope of review by the Tribunal, which will apply the law *proprio motu*. The scope of review will alter only if the complainant submits new claims to the Tribunal (see Judgment 429, under 1).

The Tribunal explained in Judgment 1019, under 10, that although a complainant may not submit to the Tribunal any claim which he did not make in the internal proceedings a new plea is another matter, and that for example a plea which comes within the ambit of claims already put forward in the complaint makes no difference to their scope. The case law allows therefore the submission of new pleas both in the complaint and in the rejoinder; only new claims may not be made (see Judgments 522, under 18, and 1590, under 3).

- An exception to the requirement of exhausting all internal procedures is the case of an implicit decision to reject a claim, which is tantamount to a final decision being taken. The same is the case where the executive head agrees that an official may seize the Tribunal directly without first having recourse to some or all of the available internal procedures.

Article VII, paragraph 3, of the Tribunal's Statute provides that:

“Where the Administration fails to take a decision upon any claim of an official within sixty days from the notification of the claim to it, the person concerned may have recourse to the Tribunal and his complaint shall be receivable in the same manner as a complaint against a final decision.”

This rule, however, has been determined by the Tribunal not to be an absolute one. Already, in an early case (Judgment 786) the Tribunal stated that, when an administration has taken a decision, even an interim one, there can be no recourse to Article VII, paragraph 3. It stated that this provision must be interpreted in the light of Article VII, paragraph 1 (Judgment 2631). Hence, where an organisation takes any decision “upon any claim of an official” – within the meaning of Article VII, paragraph 3 – within the sixty-day period thus stipulated, and particularly where it forwards the request to the competent advisory appeal body before the expiry of that period, this step forestalls an implied rejection which could be referred to the Tribunal (see Judgment 2780). Nor can this Article be invoked if no decision is taken within sixty days, but where one is taken before a complainant seizes the Tribunal.

On the other hand, a complainant can claim that an implicit decision has been taken where an Appeals Committee fails to make its recommendation within a reasonable time (see Judgments 786, 791 and 1829), but, to succeed, he must satisfy the Tribunal that there was no prospect of the internal process being concluded within a reasonable time (see Judgments 697 and 2738). The Tribunal stated that it was clear that paragraph 3 only applies to an anticipated final decision (see Judgment 2784).

But again, it should be emphasized that the rule that all internal procedures must be exhausted before a complaint to the Tribunal is receivable is not an absolute one, as the case law amply demonstrates. In Judgment 451, the Tribunal expressly said so, adding that when a complainant has done everything

possible to obtain a final decision but that, in spite of everything, the internal appeals body demonstrates, either by its statements, or by its behaviour that it has no intention of reaching a decision within a reasonable period, it is only just that there should be a derogation to the rule (see also Judgments 499, 1243 and 1344). It is important however, for the complainant to show that the internal body had the intention to delay a final decision, and this can be inferred from the fact that the delay in the procedure has been excessive, unexplained and inexcusable (Judgments 1486 and 1684). In one case (Judgment 1968), where the organization pleaded that the delay in reaching a decision was due to the fact that there was a large backlog of internal appeals to be dealt with, the Tribunal did not accept this argument and held that the delay was unreasonable. The complainant too is under an obligation to pursue diligently any right of appeal he/she may have otherwise, a direct complaint to the Tribunal will not be accepted (see Judgment 1970).

3. Form and time limits

In filing a complaint before the Tribunal a number of formal conditions and time limits, as set out in the Tribunal's Statute and Rules of Court, must be respected. Article 4 of the Rules of Court provides that "[a] complaint filed against an organization which has recognized the jurisdiction of the Tribunal and any communication relating to such complaint shall be addressed to the President through the Registrar". Under Article VII, paragraph 2, of its Statute a complaint must have been filed within ninety days after the complainant was notified of the decision impugned (see Judgments 50 and 123). This requirement is mandatory and absolute (see Judgment 758). The calculation of the ninety-day period begins at midnight on the day of such notification and ends at midnight on the ninetieth day thereafter (see Judgment 1181). It should also be noted that

the ninety-day period is not re-opened if a subsequent decision merely confirms a previous one.⁸

The date of notification of the decision is the starting point of the ninety day time limit, that is, the date on which the complainant was actually informed of the decision impugned. There may be dispute over that date or conflicting evidence. The Tribunal generally applies the rule that the burden of proof is on the sender of the communication (see Judgments 447 and 723). In one case in which the complainant contended that he had no knowledge of the decision, the Tribunal noted that the Organization had produced a letter from the post office saying that a registered letter, addressed to the complainant, had been posted on a particular date and delivered on a particular date. The Tribunal was satisfied that the Organization had discharged the onus of proving that the decision had been communicated to him (Judgment 903). In another more recent case (Judgment 2152), in which the complainant submitted that the notice of his dismissal was given out of time, and for that reason was invalid, the Tribunal considered that where a complainant clearly had ample opportunity to collect the dismissal letter from the post office before going on leave but had deliberately failed to do so, this could not be invoked by the complainant to his advantage. This, therefore, could not prevent the Organization from having given the complainant valid notice of dismissal.

In the case of an implicit decision (as described above) the ninety-day period within which a complaint may be brought to the Tribunal starts to run immediately following the expiry of the sixty-day period which gave rise to the implicit decision, that is, a total of 150 days (see Judgments 279, 434 and 1531).

⁸ There is abundant case law on this point. See, for example, Judgments 154, 305, 1005 and 1011.

Complaints can be deposited directly at the Registry, the date of filing being the date on which it was so deposited. Complaints cannot be filed by electronic mail; they can be sent by post or by fax. In the latter case the date of the fax will be the date of filing. The date of the filing of a complaint sent by post is the date of the postmark. This date will be taken as the date of deposit even if the complaint does not arrive at the Registry until after the expiry of the ninety days. If the postmark is illegible, or missing, the Registrar will ask the complainant to provide evidence of the date of despatch, otherwise the date of receipt at the Registry will be taken as the date of filing. Complainants now tend more and more to send their complaints by private delivery services. The speed of delivery, however, is of no relevance and this method of despatch does not relieve the complainant of the time limit requirement.

Each individual complaint must be directed against one single decision (see Judgment 111). The Tribunal has, however, in many cases accepted complaints by two or more complainants who have found themselves to be in identical legal situations as regards the decision impugned (see Judgments 408, 409 and 1012). Similarly, the Tribunal may, *ex officio* or at the request of the parties, join two or more complaints provided that they are based on the same set of facts and seek the same outcome (see Judgments 1000 and 1053).

As regards complaints that may be considered clearly time-barred, devoid of merit or frivolous, the President of the Tribunal has the authority, under Article 7 of the Rules of Court, to instruct the Registrar not to proceed with the complaint and to forward it to the defendant organization “for information only”. When it takes up the complaint, the Tribunal may either dismiss it summarily as clearly irreceivable or devoid of merit, or decide that it should be fully examined in accordance with the procedure described hereafter.

Complaints must be drawn up in either English or French, the working languages of the Tribunal, on a complaint form as prescribed in the Schedule to the Rules of Court and the complainant must supply one original and five copies of the complaint form together with a similar number of copies of any accompanying documents duly organized, all of which must be certified by signature to be true (Article 6, paragraph 1, of the Rules). Certified translations into the chosen language must be made of any texts which are not in English or French. The Rules also give the Registrar certain latitude in having any errors corrected by the complainant or his/her legal representative before proceeding further (Article 6, paragraph 2). Once the Registrar is satisfied that the complaint is in order, one copy is forwarded to the defendant organization (Article 6, paragraph 3). The organization shall have thirty days from the date of receipt of the complaint within which to send its reply (Article 8, paragraph 1). The same rules regarding number of copies, translations, etc., of the complaint apply *mutatis mutandis* to the reply. If the Registrar finds that the organization's reply is in order, one copy is forwarded to the complainant or his/her representative who may file a rejoinder within thirty days of the date of receipt, and if a rejoinder is filed, the Registrar shall forward one copy to the defendant organization which may file a surrejoinder within thirty days of the date of receipt. One copy of the surrejoinder shall be sent to the complainant or his/her representative and this closes the written proceedings. Similarly, the written pleadings shall close if no rejoinder or surrejoinder is filed (Article 9). When the written pleadings are complete the President instructs the Registrar to put the complaint on the list of a session of the Tribunal (Article 10). It is common for the Tribunal – or between sessions for the President – to grant extensions of the aforementioned time limits when requested by either of the parties to do so, although this is by no means automatic, and good reason for requesting extensions will be required. The Tribunal considers that the time limits prescribed

by its Rules are reasonable as well as indispensable for the efficient administration of its work. It therefore applies them rigorously as well as fairly (see Judgments 544 and 607).⁹

Before leaving these procedural issues, mention should also be made of the right of the Tribunal's President, under Article 9 of its Rules to order, on his own motion or on the application of either party, the submission of a further written statement or document and set the time limit for such submission (see Judgments 403, 871 and 1979). In any event, the defendant shall always have the last word. It is also important to mention the power of the Tribunal conferred upon it by Article 11 of its Rules, either on its own motion or on the application of either party, to order such measures of investigation as it deems fit, including the appearance of the parties before it and the hearing of expert and other witnesses. In this connection, it may be noted that oral proceedings have very rarely been called for by the Tribunal¹⁰, although it is common for complainants as well as for the defendant organizations to request them. In the first place, and as we have seen above, the Tribunal has detailed written submissions before it, including the complete reports of all the internal bodies which have investigated the case and which have already had the opportunity to hear the parties to the dispute and any witnesses they have called. It is highly unlikely, therefore, that any new evidence would be adduced if the Tribunal were to repeat these proceedings. In addition, oral proceedings – even in a small number of cases – would have a major impact on the Tribunal's capacity to deal expeditiously with the large number of complaints that are now regularly brought before it. The

⁹ See also on time limits Judgments 180, 306, 390, 517, 649 and 1031.

¹⁰ There have been cases in which oral proceedings have taken place: Judgments 26, 28,29, 77, 92,112, 121, 122, 133, 137, 580, 809, 810, and a series of cases about certain elements of the salary or the scale of pensionable remuneration in the UN system affecting officials of various UN organizations: see Judgments 825 to 838, and 986.

Tribunal will, however, never rule out the possibility of oral proceedings if it deems fit, or adopt any policy that would prevent them.

III. SUBSEQUENT PROCEEDINGS

As has been noted above, the judgments of the Tribunal are final and there can be no appeal against them. There are, however, circumstances in which one of the parties may have further reference to the Tribunal in cases in which a judgment has been rendered. These relate to cases in which a party may refer back to the Tribunal for an **interpretation** of the judgment in the case concerned. The case law for such a reference was laid down in an early case (Judgment 240) in which the Tribunal stated that a request for interpretation of a judgment is receivable by the Tribunal only “if the operative part of the judgment gives rise to uncertainty or ambiguity about its meaning or purport”. In that case the Tribunal found that the judgment in question was clear, suffered from no ambiguity and presented no difficulty of interpretation. The Tribunal, therefore, saw no reason to interpret it. A similar decision was reached by the Tribunal in a later case (Judgment 802) although in that case the Tribunal did, perhaps, in its judgment, add more clarity to its previous judgment in respect of which the complainant had requested an interpretation. In an even later case, however, in which the complainant had filed an application to the Tribunal for execution of a Judgment¹¹, while at the same time, the Organization had filed a request for interpretation of the same judgment, the Tribunal did provide a more elaborate and clear explanation of the meaning of its original judgment (Judgment 1717).

In another case in which the organization concerned had filed an application for interpretation of the Tribunal’s

¹¹ Judgment 1614.

judgment¹², and in which the complainant had submitted a reply, the Tribunal, while stating that there was no evidence of bad faith on the part of the complainant, did find the application of the Organization to be receivable and provided a clearer meaning of a phrase appearing in the grounds of the ruling without which the Tribunal's decision could not be properly understood and executed. In that case the Tribunal stated that “[t]he purpose of the application cannot be to shed light on grounds of a ruling which are alleged to be unclear or contradictory. It must concern only the decision itself. It may, however, additionally concern the grounds of the ruling if the decision refers to them explicitly, in which case they must be seen as part of the latter” (Judgment 2483). Another example is a case in which the Organization made an application for an interpretation which the complainant contested. In that case (Judgment 2481) the Tribunal agreed with the complainant that the meaning of the original judgment¹³ did not suffer from uncertainty or ambiguity such as might warrant interpretation and dismissed the application.

In addition, applications may be made to the Tribunal for the **revision** of a judgment. On this subject it is appropriate to cite *in extenso* the ruling of the Tribunal in its Judgment 442 (delivered in 1981) in which it dealt fully with the issue.

The Tribunal first recalled that:

“Neither the Statute nor the Rules of Court provide for review of the Tribunal's judgments. Do they then by implication preclude review or do they suffer from a lacuna which the Tribunal may fill? The Tribunal has not yet answered these questions. It has heard several applications for review, but has dismissed them simply by finding that there were no grounds for review. It has not yet discussed in full the scope for review. In this case it will deal with the

¹² Judgment 2354.

¹³ Judgment 2351.

subject in part by citing several pleas in favour of review which it will not allow and by reserving judgment on others.”

The Tribunal also stated:

“The Tribunal’s judgments carry the authority of *res judicata* from the date on which it delivers them. Though subject to review thereafter, they will be reviewed only in exceptional cases. That is the rule under all judicial systems which allow review. It must therefore be made clear at the outset that several pleas in favour of review will not be allowed.”

It listed the following grounds for review which it considered as inadmissible:

“One is an alleged mistake of law. To allow an application for review on the grounds of the Tribunal’s legal reasoning would be to permit anyone who was dissatisfied with a decision to question it indefinitely in disregard of the principle of *res judicata*.

Likewise the Tribunal will not allow review on the grounds of an alleged mistake in appraisal of the facts, i.e. the interpretation which the Tribunal has placed on the facts.

Failure to admit evidence is no valid reason for review; otherwise an unsuccessful party might challenge indefinitely the facts on which the judgment is founded.

Lastly, the Tribunal will not allow review on the grounds that it has omitted to comment on pleas submitted by the parties. Otherwise it would have to pass express judgment on all such pleas, even if they are plainly immaterial. The purpose of an application for review is not to compel the Tribunal to pass judgment on irrelevancies.”

However, the Tribunal considered that there could be admissible pleas in favour of review. It said:

“Other pleas in favour of review may be allowed if they are such as to affect the Tribunal’s decision. They include an omission to take account of particular facts; a material error, i.e. a mistaken finding of fact which, unlike a mistake in appraisal of the facts, involves no exercise of judgment; an omission to pass judgment on a claim; and the discovery of a so-called ‘new’ fact, i.e. a fact which the complainant discovered too late to cite in the original proceedings.”

In this Judgment the Tribunal explained the review proceedings as follows:

“There may be either one or two stages in review proceedings. The Tribunal will first determine whether the plea is admissible. If it is not, the Tribunal will dismiss the application without looking further. If it holds any of the pleas to be admissible, it will then reconsider its judgment on the basis of the evidence adduced in the review proceedings. Those are the only circumstances in which the Tribunal will hear the complainant’s submissions on the merits.

[...]

Where a plea is not such as to affect its decision, the Tribunal will decline not only to reconsider its judgment but also to correct the summary of facts and its legal reasoning. It would lay an undue burden on a tribunal to require it to correct any flaws which had no effect on its decision.”¹⁴

Again according to precedent, an application for review must be filed within a reasonable lapse of time after the publication of the judgment (see Judgment 1952).

The Tribunal has dealt with approximately 160 applications for review, some of them submitted by the defendant

¹⁴ See also, in this connection, Judgment 1234.

organization, but until now only one has been admitted (see Judgment 1255).

Either party to a complaint may also in certain circumstances apply to the Tribunal for the **execution** of a judgment. This will normally occur in cases where the organization has failed or delayed in its obligation to give full effect to the remedies granted by the Tribunal in its judgment. Such cases may concern the payment of compensation (see, for example, Judgment 2482) or the failure of the Organization to carry out an order given by the Tribunal, e.g. where the Tribunal had ordered the Organization concerned to re-establish an internal appeals body (which had been abolished) to consider certain issues raised by the complainant. In that case (Judgment 2518) the Tribunal took the view that the Organization's tactics of obstruction and delay in the face of a clear order from the Tribunal had caused the complainant moral damage quite apart from the damage she had suffered in the events that gave rise to the Judgment. In another application for execution (Judgment 732) the Tribunal stated that the complaint was not about execution as such but about the allegedly harmful consequences of the way in which the Organization had executed the judgment. That was not a matter that was ordinarily connected with execution and it was therefore one that must go through the internal appeal procedure before it could come to the Tribunal.

It may be noted that in all cases involving applications for interpretation, review or execution, the application will, in accordance with the normal procedure, be transmitted to the other party concerned for reply which, if presented, will be taken into account by the Tribunal. As in the case of frivolous applications the Tribunal will invoke Article 7 its Rules to dismiss them as being clearly irreceivable or devoid of merit. Like any other complaint such applications must meet the formal requirements of the Rules.

CONCLUSIONS

In this general overview of the Tribunal's mandate and proceedings I have tried to illustrate three aspects: first, the manner in which the Tribunal does its work in accordance with its Statute and Rules; second, how the jurisprudence of the Tribunal has remained very consistent while at the same time evolving in certain areas in the light of new situations; and third, the very considerable importance which the Tribunal attaches to ensuring that some 46,000 officials of those organizations recognizing its jurisdiction enjoy all the safeguards of due process and protection against arbitrary or unfair action taken against them by the administrations employing them.

Like the courts of any national judicial system the Tribunal is not perfect. But it is fair and just to say that, at all times, efforts have constantly been made – and continue to be made – by the ILO to ensure that the quality and impartiality of the Tribunal's judges remains at the highest possible level. The fact that, each year, more and more organizations seek to recognize the jurisdiction of the Tribunal, in addition to which the number of complaints by officials continues to increase, are also evidence of the respect in which the Tribunal is held by all the parties. The fact, too, that its judgments are always, or almost always, executed shows that organizations are confident that the Tribunal has acted fairly and objectively in making them.

Also worthy of mention are the constant efforts of the Tribunal itself, including its Registry, to streamline the business of the Tribunal and modernize the methods by which it functions on a daily basis. This involves the internal administration of the Tribunal, the maintenance of its web site, the distribution of cases amongst the various judges, the number of judges who will make up the various panels of the Tribunal for individual cases, periodicity of sessions, etc. At each session the Tribunal devotes time to review these matters with the Registrar, and adaptations

are made to guarantee the smooth and efficient dispatch of business. As a result, there has never been a backlog of cases for examination. Indeed, if the statutory time limits are strictly adhered to by the parties, taking into account extensions which are kept within reasonable limits; all cases can be dealt with within one year after the filing of the complaint.

The consistency of the case law has been facilitated, too, by the fact that all cases appear on the Internet shortly after each session of the Tribunal. A database (called “Triblex”) is publicly available and, as well as being of value both to complainants and to defendant organizations in the preparation of their respective pleadings, this facility also allows the judges to have access to the relevant jurisprudence that they may need for the examination of the cases for which they are responsible.

As the world evolves so do life and labour relations in international organizations. Contractual arrangements have become less permanent and less secure, thereby giving rise to more contestation, for example, with regard to the renewal and non-renewal of contracts. The Tribunal has also had to face more “modern” problems such as mobbing and harassment of various kinds, as well as same-sex marriages. In addition to the increased complexity of labour relations in international organizations, officials are more litigious than in the past, possibly as a result of the cover that is now provided by certain insurance companies for costs in cases against arbitrary or abusive action by organizations which employ them and also because they are more aware of their rights. All these factors create new challenges for the Tribunal both in terms of the number of cases before it, but also in terms of the type of new situations which call for new approaches by the Tribunal.

Recent cases, involving a large number of organizations, demonstrate that it is often mismanagement or poor labour relations that lie at the heart of administrative decisions that are

tainted with irregularity or procedural flaws; the caseload of the Tribunal shows that these factors often result in a recurrence of the same kind of cases against the same organizations. The judgments of the Tribunal contain much guidance as to how contentious situations and difficulties can be avoided or resolved, either through improved administrative practices or attitudes, or by making adjustments to statutory rules or internal procedures. Organizations, in particular their legal and personnel departments, would benefit greatly from a deeper analysis of the Tribunal's judgments not only in cases brought against them but also against other organizations. Not only would this contribute to an amicable settlement of a greater number of disputes within the organizations whenever they arise; it would also enhance good labour relations and diminish the number of complaints for which redress may be sought in the Tribunal.

In the meantime, as Registrar of the Administrative Tribunal of the ILO, and as an official who has had long experience of international organizations, I can only say that officials and organizations alike are fortunate indeed to have such a prestigious and competent Tribunal at their disposal. The Tribunal continues to be an important and stable ILO institution in whose objectivity and impartiality all the parties can have the utmost confidence for a fair resolution of disputes between them.

Geneva, September 2009