

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

S.

v.

**Global Fund to Fight AIDS, Tuberculosis
and Malaria**

(Application for review)

140th Session

Judgment No. 5016

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 4912 filed by Mr J.-D. S. on 7 October 2024;

Considering Articles II, paragraph 5, and VI, paragraph 1, of the Statute of the Tribunal and Articles 6, paragraph 5, and 7 of its Rules;

Having examined the written submissions of the complainant;

CONSIDERATIONS

1. The complainant worked for the Global Fund to Fight AIDS, Tuberculosis and Malaria (“the Global Fund”) at various times between April 2015 and June 2017. In February 2019, he was hired again to work as a consultant in the Office of the Inspector General under an “Indefinite Quantity Contract” concluded between the organisation and a recruitment agency based in Switzerland. The services he provided were the subject of purchase orders submitted by the Global Fund to the recruitment agency. Pursuant to the terms of the “Indefinite Quantity Contract”, disputes between the parties were to be resolved by arbitration. The complainant obtained several extensions of his assignment contract with the recruitment agency and his employment eventually ended on 8 November 2019.

On the complaint form of the complaint that gave rise to Judgment 4912, the complainant indicated that he was impugning an express final decision of 20 October 2023 from the Chair and Vice-Chair of the Ethics and Governance Committee rejecting – following several investigations – allegations of impropriety, retaliation and conflict of interest which he had raised pertaining to events that purportedly took place in 2019, that is to say while he was working as a consultant under the contract concluded between the Global Fund and the aforementioned recruitment agency.

2. In Judgment 4912, consideration 3, the Tribunal noted that it was clear enough from the complainant’s pleas and claims that he was in fact challenging the non-renewal of his contract rather than the decision of 20 October 2023. However, at the material time, there was no contractual relationship between him and the Global Fund. Therefore, there was, in any event, no basis on which he could be considered as an “official” of the defendant organisation for the purposes of Article II, paragraph 5, of the Tribunal’s Statute. The Tribunal noted that, had there been an agreement between the complainant and the Global Fund for the provision of his services as a consultant, the organisation could, in theory, have stipulated that the Tribunal was competent to hear disputes arising out of that agreement, but that was not the case. Consequently, the Tribunal summarily dismissed the complainant’s complaint in accordance with the procedure set out in Article 7 of its Rules, as being clearly outside its competence.

3. As the Tribunal has already recalled in consideration 4 of Judgment 4906, referring to consideration 2 of Judgment 4440, pursuant 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. Under Article 6, paragraph 5, of the Rules of the Tribunal, the only admissible grounds of review are a failure to take account of material facts, a material error (namely a mistaken finding of fact 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 (see, for example, Judgments 4327, consideration 3, 3473, consideration 3, 3452, consideration 2, and 3001, consideration 2).

4. In his application for review, the complainant explains that the Tribunal has failed to take account of material facts as the impugned decision in Judgment 4912 grouped together two allegations which occurred at different times, and which should have been considered separately. He asserts that some wrongdoing occurred from April 2015 to July 2016, that is to say when he was a Global Fund staff member. He also refers to the discovery of new facts on which he was unable to rely in the original proceedings and which could alter the outcome of his complaint.

The complainant requests that the Tribunal review Judgment 4912 based on these grounds and declare itself competent, at least for the allegations related to facts which occurred when he was a Global Fund staff member.

5. The complainant's submissions do not support a conclusion that the judgment should be reviewed on either of the abovementioned grounds.

6. Firstly, the Tribunal notes that, in his application for review, the complainant basically disregards the findings it had made in consideration 3 of Judgment 4912 (which are recalled in consideration 2 above) and keeps arguing that he was challenging the 20 October 2023 decision in his original proceedings. It is also quite clear from his submissions that he is trying to revisit some arguments advanced unsuccessfully in his first complaint. But the matters raised are *res judicata* and the complainant puts forward no legitimate ground to reopen the findings made by the Tribunal in the original judgment (see Judgments 4933, consideration 8, 4440, consideration 7, and 3479, consideration 6).

7. Secondly, as to the alleged discovery of new facts, the Tribunal recalls its case law according to which, though the existence 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 4906, consideration 8, 4440, consideration 8, 3561, consideration 5, and 1545, consideration 5). In this case, the Tribunal fails to see, in any event, how the factual details provided by the complainant would have led it to decide differently on the claims that were submitted to it in the complaint resulting in Judgment 4912.

8. It follows from the foregoing that the complainant's application for review is clearly devoid of merit and will 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 26 May 2025, Mr Patrick Frydman, President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 3 July 2025 by video recording posted on the Tribunal's Internet page.

PATRICK FRYDMAN

JACQUES JAUMOTTE

CLÉMENT GASCON

RENÉ M. VARGAS M.