

EIGHTY-THIRD SESSION

In re Moreno de Gómez (No. 2)

(Application for execution)

Judgment 1620

THE ADMINISTRATIVE TRIBUNAL,

Considering the application filed by Mrs. Yocasta Moreno de Gómez on 29 October 1996 for the execution of Judgment 1553, the reply of 12 December 1996 from the United Nations Educational, Scientific and Cultural Organization (UNESCO), the complainant's rejoinder of 24 March 1997 and the Organization's surrejoinder of 7 May 1997;

Considering Articles II, paragraph 5, VI and XII of the Statute of the Tribunal;

Having examined the written submissions;

CONSIDERATIONS

1. In Judgment 1553, delivered on 11 July 1996 on the first complaint of Mrs. Moreno de Gómez, the Tribunal ordered:

"1. The Organization's decisions of 29 December 1992, 25 July 1994 and 10 November 1994 are quashed.

2. The Organization shall either, within sixty days of the date of publication of this judgment:

(a) reinstate the complainant at her former grade as from 1 February 1993 and up to the date of this judgment;

(b) pay her salary, allowances and any other benefits accordingly, less any indemnities she may have received on termination;

(c) pay her interest on all arrears at the rate of 10 per cent a year as from the dates at which they fell due; and

(d) grant her a contract of appointment for a period of two years from the date of this judgment at the same grade and in a post matching her qualifications and experience;

or failing that

(a) pay her damages in an amount equivalent to her salary and allowances for four years and six months at the rates prevailing at 31 January 1993, less any indemnities she may have received on termination; and

(b) pay her interest on the net amount at the rate of 10 per cent a year as from 20 December 1994, the date of correction of her complaint, up to the date of payment.

3. The Organization shall pay the complainant a total of 500,000 French francs for material and moral injury.

4. It shall pay her 50,000 French francs in costs.

5. Her other claims are dismissed."

2. On 6 August 1996 the Organization paid to the complainant 550,000 French francs in satisfaction of the awards in points 3 and 4 of that ruling.

3. By a letter dated 16 August 1996 the Director-General applied to the Tribunal for review of Judgment 1553 and the rulings contained therein.

4. The complainant filed this application on 29 October 1996 seeking the execution of point 2 of those rulings, damages for failure to execute it and damages for the exceptionally grave material and moral injury she had suffered by reason of the deliberately delayed execution of points 3 and 4. She also asks for costs.

5. In its reply the Organization denies delay in executing points 3 and 4, payment of the sums ordered having been made less than a month after the delivery of the judgment.

6. The complainant's claim to damages for delay in paying the sums ordered in points 3 and 4 must fail because payment was made within a reasonable time.

7. In regard to point 2 the Organization submits that its application for review had the effect of suspending the execution of the judgment. The plea is unfounded. Article VI of the Tribunal's Statute states that its judgments are "final and without appeal". There is no provision in its Statute or Rules for any stay in the execution of a judgment. As the Tribunal held in Judgment 82 (*in re Lindsey*), even if there were referral under Article XII of the Statute to the International Court of Justice, "the immediately operative character" of the Tribunal's judgment would not be affected.

8. In Judgment 1602 of 30 January 1997 the Tribunal summarily dismissed the Organization's application for review because it disclosed no valid grounds.

9. In its surrejoinder dated 7 May 1997 the Organization admits that, with the dismissal of its application for review, it has no alternative but to execute Judgment 1553. It says that it will take all the measures required by the judgment, but that the calculation of the amounts due to the complainant is particularly complex and it needs time to ensure proper precision, especially because of her debts to its Savings and Loan Service.

10. In point 2 of its ruling the Tribunal allowed sixty days for the Organization to decide whether to reinstate the complainant or pay her damages. There is nothing in the evidence to indicate that the period of sixty days was too short. The complainant is therefore entitled to damages for the Organization's delay since 10 September 1996 in executing point 2. The Tribunal will award her 50,000 French francs under this head. It also awards her 10,000 French francs in costs. Furthermore, if the Organization fails to execute point 2 or to pay the complainant those two amounts within thirty days of the date of delivery of the present judgment, it shall pay her a penalty of 25,000 French francs for each further month of delay.

DECISION

For the above reasons,

1. The Organization shall pay the complainant damages in the sum of 50,000 French francs for its failure to execute point 2 of the ruling in Judgment 1553.

2. It shall pay her 10,000 French francs in costs.

3. If the Organization fails to execute point 2 of the ruling in Judgment 1553 or to pay her those two amounts within thirty days of the date of delivery of this judgment, it shall pay her a penalty of 25,000 French francs for each further month of delay.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Edilbert Razafindralambo, Judge, and Mr. Jean-François Egli, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 10 July 1997.

William Douglas
E. Razafindralambo
Egli
A.B. Gardner