

**SEVENTY-SEVENTH SESSION**

***In re* DIOTALLEVI No. 2  
and TEDJINI No. 2**

**(Applications for execution)**

**Judgment 1365**

THE ADMINISTRATIVE TRIBUNAL,

Considering the applications for execution of Judgment 1272 filed by Miss Marina Diotallevi and Mr. Patrice Tedjini on 17 September 1993, the replies of 5 January 1994 from the World Tourism Organization (WTO), the complainants' rejoinders of 30 March and the Organization's surrejoinders of 19 May 1994;

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

Having examined the written submissions;

**CONSIDERATIONS:**

1. By Judgment 1272 of 14 July 1993 on Miss Diotallevi's and Mr. Tedjini's first complaints the Tribunal set aside a decision by the Secretary-General of the World Tourism Organization to appoint Mr. Scott Wayne as Director of Communications and ordered the Organization to resume the process of appointment to his post. Shortly before that judgment went out the WTO appointed Mr. Wayne, whose original contract expired on 9 June 1993, adviser on press and communications. The complainants' applications for that post were turned down by decisions notified to them on 23 June 1993.
2. Judgment 1272 allowed the first complaints, but the complainants have filed these applications in the belief that it has not been duly executed.
3. Since both applications raise the same issues they are joined to form the subject of a single ruling.
4. The action taken on Judgment 1272 is set out in memoranda of 31 August 1993 from the Deputy Secretary-General to the complainants. The memoranda say that they have each been sent a cheque on 3 August 1993 to meet the award of costs; that the Organization is willing to remove from their files any documents about them written or annotated by Mr. Wayne between July 1991 and June 1993; and that it is sorry about the breach of procedure; but it sees no point in resuming the process of appointment to Mr. Wayne's post, his appointment to a new post having been notified on 23 June 1993 and become final. The Deputy Secretary-General says:  
  
"As to the procedure for appointment of Mr. Wayne to his previous post, I am sure you will agree it cannot be resumed: his duties have ended and his later appointment to a post in the Organization was decided by due process in which you took part and your application was duly considered in accordance with the wish you expressed in your submissions to the Administrative Tribunal of the ILO to see proper respect for the rules on appointments in this Organization."
5. In the complainants' submission the Organization has flouted Judgment 1272 by refusing to resume the procedure for appointment to the post; they do not have to acquiesce in the decision to appoint Mr. Wayne in June 1993 - before the judgment - because they had reserved their position in that respect; and that decision was just a tactic to make it harder to execute the judgment. They seek the quashing of the decisions of 31 August 1993 refusing to execute the judgment in full, the resumption of the process of appointment to the post, awards of damages and costs.
6. Contrary to what they contend, the decision of June 1993 created a new situation. Although Judgment 1272 set aside Mr. Wayne's appointment in July 1991 as Director of Communications, it had neither the purpose nor the

effect of barring a lawful decision by the Organization to fill any post it might care to create in Communications. When Mr. Wayne's two-year contract ended, and before Judgment 1272 was delivered, the Secretary-General created a post for an adviser on press and communications and appointed Mr. Wayne to it by a procedure which prompted no timely challenge. That decision did not of course give effect to the judgment because it came earlier, but the situation it gave rise to is material. The complainants may not properly rely on the mere "reservations" they entered when they themselves applied for the new post. Judgment 1272 does not require the Organization to resume the procedure that led to the decision of June 1993. On that score the complainants are wrong.

7. They further object to the Organization's failing to execute point 2 of the operative part of the judgment, which ordered resumption of the procedure for filling the post of Director of Communications.

8. The Organization pleads that it could not resume the process of appointment since "Mr. Wayne's previous contract had expired on 9 June 1993 ... and there was obviously no point in resuming a procedure for an appointment that, whatever the judgment had ruled, had ceased to exist in law". But there the Organization shows misunderstanding about the effect of a judgment. The quashing of Mr. Wayne's appointment in 1991 being *res judicata*, it had a duty under the judgment to resume the process from the date of the unlawful appointment, regardless of the new situation arising from the expiry of Mr. Wayne's appointment and his assignment to a post as adviser. The complainants are therefore right in contending that the Organization was at fault in refusing to carry out the process properly.

9. Yet any satisfaction that the complainants might derive from resumption of the procedure would be merely formal, Mr. Wayne having been appointed in June 1993 and the position thus having changed. Such resumption being inadvisable, the Tribunal exercises the option that Article VIII of its Statute allows of not setting aside the decisions of 31 August 1993. But the Organization's refusal of resumption has caused the complainants actionable injury. Their refraining from seeking damages in their first complaints does not bar their claims in the present applications to damages for the Organization's failure to execute Judgment 1272. It is the defendant's own fault that it may not now make good its mistakes, and the resulting moral injury warrants awards of damages which are set at 10,000 French francs for each complainant.

10. Since the complainants succeed they are entitled to costs and the Tribunal awards each of them 5,000 French francs.

#### DECISION:

For the above reasons,

1. The Organization shall pay each of the complainants 10,000 French francs in final damages.
2. It shall pay each of them 5,000 French francs in costs.
3. Their other claims are dismissed.

In witness of this judgment Mr. José Maria Ruda, President of the Tribunal, Mr. Edilbert Razafindralambo, Judge, and Mr. Michel Gentot, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 13 July 1994.

(Signed)

José Maria Ruda  
E. Razafindralambo  
Michel Gentot  
A.B. Gardner