

NINETY-FIRST SESSION

In re Créchet (No. 7)
(Application for execution)

Judgment No. 2065

The Administrative Tribunal,

Considering the application for execution of Judgment 1910 filed by Mr Patrick Georges Michel Créchet on 11 October 2000, the reply submitted by the European Patent Organisation (EPO) on 21 December 2000, the complainant's rejoinder of 19 February 2001 and the Organisation's surrejoinder of 18 April 2001;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant is an examiner at grade A3 in Directorate-General 1 (DG1) of the European Patent Office, the EPO's secretariat, at The Hague. He was seconded to Lisbon as a liaison officer with the Portuguese National Industrial Property Institute from 1 May 1992 to 31 December 1995. As from 1 January 1996 he resumed his former duties as examiner at DG1 and at the same grade, A3.

In Judgment 1667 (*in re* Créchet No. 2) the Tribunal stated that a successful mission as liaison officer would "be taken into account as a point in his favour whenever a decision was to be taken on promotion".

By a letter of 27 August 1998 the complainant was informed that the President of the Office had decided to reject his internal appeal against the refusal to promote him to grade A4. In Judgment 1910 of 3 February 2000 the Tribunal ruled on Mr Créchet's fifth complaint, which challenged the decision in that letter. It found that in taking its decision about the complainant's promotion, the EPO had overlooked the matter of successful work as a liaison officer over and above the general criteria for promotion; and that in so doing it had deprived its refusal of a legal basis. Being unable to substitute its own assessment for that of the Organisation, the Tribunal quashed the rejection of the internal appeal and sent the case back to the EPO for the President to take a new decision about the complainant's promotion.

By a letter of 2 March 2000 the President told the complainant that he had taken note of Judgment 1910 and with a view to its execution had asked the Chairman of the Promotion Board to reconsider his case in the light of the Tribunal's reasoning. He further informed him, in a letter of 31 August 2000, that the Board had decided to defer its opinion because all his staff reports since 1992 were *sub judice* and it was unable to recommend his promotion to grade A4 on the basis of reports that had not been finalised. The President added that once they were finalised he would consult the Board again. That is the impugned decision.

B. The complainant submits that by deciding to postpone its decision on his promotion for the reasons cited in the letter of 31 August 2000, the President disregarded Judgment 1910. Furthermore, that letter mentions neither the "special guarantees" that went with his mission to Portugal, nor the "level of his performance" as a liaison officer.

He asks the Tribunal to quash the impugned decision and send the case back to the EPO for a new decision on his promotion in accordance with Judgment 1910 and to award him 500 euros in costs.

C. In its reply the EPO explains that the complainant's reports were finalised after the President's decision of 21 June 2000 to reject his internal appeals. The Promotion Board did reconsider his case on 4 December but

concluded that it was unable to recommend promoting him to A4 and the Chairman so announced in a note of 11 December 2000.

The Organisation contends that the complaint is devoid of merit and shows no cause of action. In Judgment 1910 the Tribunal ruled that the complainant's mission to Portugal should be taken into account in his reports; the Promotion Board's recommendation and the President's decision could therefore be legitimately deferred until the internal procedure was over, the reports on the complainant's performance as liaison officer being *sub judice*. Consequently, whatever the recommendation and decision might say, it did execute Judgment 1910 ordering the case to be sent back to the Organisation for a new decision as to the complainant's promotion to grade A4.

D. In his rejoinder the complainant submits that further consultation of the Promotion Board does not amount on its own to execution of Judgment 1910. In reconsidering the case the EPO did not establish the "share to be attributed to success in [his] liaison work" in the context of its overall evaluation. He adds that at the time of filing his rejoinder he had still received no final decision from the President regarding his promotion.

E. In its surrejoinder the EPO points out that the complainant was told of the President's decision by a letter of 11 April 2001. Endorsing the Board's recommendation, the President decided to disallow the complainant's claim on the grounds that liaison work did not justify his promotion.

CONSIDERATIONS

1. The complainant's career and the facts that prompted this dispute are set out in Judgment 1910 (*in re* Créchet No. 5) delivered on 3 February 2000. In that case the complainant challenged the decision to refuse him promotion to grade A4.

In the above-mentioned judgment the Tribunal found that the complainant, who had been seconded to Portugal as a liaison officer from 1 May 1992 to 31 December 1995, had been given limited assurance that a successful mission would be taken into consideration for the advancement of his career. But the EPO failed to take account of the mission as an extra point in his favour either in reporting on his performance or in coming to a decision about his promotion. The Tribunal therefore sent the case back to the Organisation.

2. On 2 March 2000 the President of the Office informed the complainant that he had asked the Promotion Board to reconsider his case in the light of that judgment and to give him an opinion. In a letter of 8 August 2000 the complainant told the President that, in his view, the judgment had still not been executed. The President replied in a letter of 31 August 2000 that the Promotion Board had decided to postpone a decision until the complainant's staff reports - which were *sub judice* - had become final. He concluded his letter with the statement: "As soon as the reports still outstanding have been finalised, I will seek a new opinion from the Promotion Board."

In his sixth complaint, on which the Tribunal has also ruled this day, the complainant challenges his staff reports for the periods 1992-1993, 1994-1995 and 1996-1997.

3. In this application for execution the complainant is asking the Tribunal to quash the decision of 31 August 2000 and send the case back to the Organisation for a decision on his promotion in accordance with Judgment 1910. In his submission the judgment has not been executed because the decision as to his promotion has been deferred.

The Organisation claims dismissal of the application. Since the decision about his promotion was to be taken on the basis of his reports and was to take into account his mission in Portugal as an extra point in his favour, the EPO deems that it was right to wait for the reports to be finalised before deciding. Though in its reply it does not claim that the President has already ruled on the promotion, it contends that it did execute Judgment 1910 and that this application therefore lacks a cause of action.

In its surrejoinder, however, it states that it submitted the reports for the period 1992-1997 to the Promotion Board on 4 December 2000, that the latter issued an unfavourable opinion and the President therefore rejected the complainant's claim on 11 April 2001.

4. In this application the complainant is challenging the decision of 31 August 2000 to defer any decision about promotion pending settlement of the appeals against his reports for the period 1992-1997. However, the President's

new decision of 11 April 2001, which is not part of the present procedure, has deprived the application of a cause of action.

5. Since he claims costs, it must be determined whether the complainant did have a cause of action at the time of filing this application on 11 October 2000. At that date, the execution of Judgment 1910 had not been completed, the reports having been reconsidered by the Board on 4 December 2000.

When the Tribunal sends a case back to an organisation for a new decision, what constitutes proper execution of its judgment - including the appropriate time scale - will depend on the circumstances of the case and particularly the measures prerequisite to a new decision.

In the judgments on his earlier complaints the Tribunal ruled that the decision about the complainant's promotion was to be based on the quality of his performance - as reflected in his reports - and on the success of his mission in Portugal. The complainant having appealed against his three reports it appeared advisable to await the outcome of those appeals before taking a decision on his promotion. Otherwise, the Organisation would have run the risk of having to amend its decision later. Postponement of the decision also appeared to be in the complainant's interests since he had challenged the ratings in his staff reports. In any event, the matter was not urgent since a promotion could have been granted retroactively.

The Tribunal therefore finds no fault with the decision of 31 August 2000.

Consequently, the complainant's claim to costs cannot succeed.

DECISION

For the above reasons,

The application is dismissed.

In witness of this judgment, adopted on 9 May 2001, Mr Michel Gentot, President of the Tribunal, Mr Jean-François Egli, Judge, and Mrs Hildegard Rondón de Sansó, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 12 July 2001.

(Signed)

Michel Gentot

Jean-François Egli

Hildegard Rondón de Sansó

Catherine Comtet