

NINETY-SIXTH SESSION

(Application for execution)

Judgment No. 2304

The Administrative Tribunal,

Considering the application for execution of Judgment 2246 filed by Mr R. E. K. on 4 September 2003, the reply of the International Criminal Police Organization (Interpol) of 15 October, the complainant's rejoinder of 22 October and the Organization's surrejoinder of 31 October 2003;

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

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

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

A. Certain facts related to this case are given in Judgments 2192 and 2246, delivered on 3 February and 16 July 2003 respectively. In the latter judgment, the Tribunal set aside the impugned decision and ordered Interpol to furnish the complainant within 30 days "with the part of the documents supplied to the Tribunal pursuant to Judgment 2192 concerning the Executive Committee's discussions on the termination of his wife's appointment due to the abolition of her post and on the revocation of that termination" and to pay him 5,000 euros in costs.

With a letter of 21 August 2003, the Secretary General of Interpol sent the complainant a cheque covering the costs ordered by the Tribunal. He said in his letter that before providing the above-mentioned documents, he wanted an undertaking on the part of the complainant to the effect that "the documents should in no way and in no circumstance be communicated to a third party".

The complainant filed the present application on 4 September 2003. On 1 October Interpol sent him a letter, delivered by bailiff, from the President of the Organization's Executive Committee (hereinafter "the President of the Organization"), dated 30 September 2003, enclosing a decision by the Executive Committee taken at its 139th session in Benidorm (Spain) on 27 and 28 September 2003, together with the following documents:

- an extract of the minutes of the Committee's discussions at its 129th session held in Lyons (France) from 6 to 8 March 2001 (approved by the Committee);
- the transcription of the discussion concerning the matter in hand on the basis of which the minutes had been drafted (confidential item 2 on the Agenda of the 129th session);
- an extract of the summary record of the Committee's discussions at its 127th session held in Rhodes (Greece) on 28 and 29 October 2000 (the version approved by the Committee); and
- an extract of the draft summary record of the Committee's discussions at the same session (the version drafted by the precis writer and used to prepare the summary record).

The President of the Organization stated in his letter that the documents concerned were confidential and should not be disclosed to third parties.

B. The complainant points out that Judgment 2246 does not make disclosure of the documents in question conditional on any undertaking on his part. The Organization's request is therefore unfounded. Regardless of the defendant's alleged wish to comply with its own rules, the Tribunal settled the question once and for all in a

judgment which, "considering its clarity and concision", was perfectly unambiguous. He considers that Interpol's attitude constitutes, to say the least, a dilatory manoeuvre, which causes him injury.

He asks the Tribunal to order the full execution of the above-mentioned judgment; to order Interpol, subject to a daily penalty, to furnish him unconditionally, on the morrow of the notification of the forthcoming judgment, with the extracts of the documents concerned; and to award him damages for moral injury, and costs.

C. In its reply the Organization contends that the application for execution of Judgment 2246, subject to penalty, serves no further purpose, since that judgment was fully executed on 1 October 2003, in other words only two days after the Executive Committee ended its 129th session. The alleged moral injury therefore did not arise.

Interpol maintains that in accordance with its own rules it cannot disclose confidential documents without the Executive Committee's express authorisation. It was in fact to obtain that authorisation that it asked the complainant to undertake not to divulge the documents supplied. The latter, however, deliberately gave no reply. The Organization recalls that the judgment ordered it to supply "the complainant" with the documents. Under those circumstances, its request was reasonable, and the fact that the Tribunal did not elaborate on that point does not detract from the confidential nature of the documents. It maintains it acted in good faith, in difficult circumstances and in the best interests of the complainant, insofar as the requirement that Executive Committee documents be kept confidential does not conflict with the right to information upheld by the Tribunal in its judgment.

The Organization asks the Tribunal to clarify whether the aforementioned judgment authorises the complainant to disclose the documents concerned to any natural or legal persons other than his lawyer.

D. In his rejoinder the complainant points out that, in failing to furnish him with the documents concerned within 30 days, the Organization did not strictly comply with point 2 of the decision in Judgment 2246 and caused him further injury.

He then draws attention to the fact that the documents supplied by the defendant are incomplete: the report of the present Secretary General and its annexes, to which the record of the discussions of the 129th session of the Executive Committee refers in several places, are missing. The complainant argues that the Organization has therefore only partially fulfilled its obligations towards him.

Lastly, he argues that if his wife, who has also filed a complaint with the Tribunal, is included in the ban on disclosing the documents to third parties - of which he was reminded by the President of the Organization in his letter of 30 September 2003 - that would be tantamount to depriving him of the right to defend his honour and his reputation and those of his family.

E. In its surrejoinder the defendant reiterates that the execution of the Tribunal's ruling required the consent of the Executive Committee and argues that the fact that it raised the issue at the earliest session of the Committee following the delivery of the judgment is evidence of its good faith. With regard to the complainant's allegation that his moral injury has been aggravated, it recalls that the Tribunal found in its judgment that the conditions for an award of moral damages were not met.

It denies that it did not fulfil all its obligations towards the complainant: in its Judgment 2246, the Tribunal ordered the Organization to disclose to the complainant only the part of the documents supplied to the Tribunal pursuant to Judgment 2192, and points out that "the annexes mentioned by the complainant were never supplied by the Organization to the Tribunal, which did not request them". Interpol then reviews the merits of the case at length and contends that the Executive Committee's summary records show that the complainant's honour was never at stake in the Committee's discussions. It considers that the complainant's interpretation of the documents is biased and incomplete and that he puts forward no evidence in support of his allegations. It accuses him of making personal attacks on his successor, despite the fact that the impugned decisions were taken or approved by the Executive Committee.

Lastly, it accuses the complainant of having deceived the Tribunal by arguing that it was to defend his honour that he wanted to obtain documents, which were in fact intended to help his spouse bolster her own complaint. Interpol reiterates its request that the Tribunal should indicate precisely to whom the confidential documents it supplied to the complainant may be disclosed and under what conditions these may be used.

CONSIDERATIONS

1. In his complaint filed on 12 November 2001, the complainant had asked the Tribunal to order the disclosure by the Organization of the relevant passages of the minutes of the meetings of the Executive Committee of Interpol of October 2000 and March 2001. According to the complainant, there was every indication that his good name "was seriously challenged during the discussions" of the Executive Committee and that his reputation had been tarnished.

After the defendant opposed the request on the grounds that, in its view, the documents it was being asked to disclose were confidential, the Tribunal considered that it would be useful to consult the documents before delivering its ruling.

2. After consulting the said documents, the Tribunal, in its Judgment 2246, ordered Interpol to provide the complainant with the part of the documents supplied to the Tribunal pursuant to Judgment 2192 concerning the Executive Committee's discussions on the termination of the complainant's wife's appointment due to the abolition of her post and on the revocation of that termination.

The documents were to be produced within 30 days of notification of the judgment. The defendant was ordered to pay the complainant 5,000 euros in costs.

3. Having received notification of Judgment 2246 on 28 July 2003, the Secretary General sent the complainant on 21 August 2003 a cheque covering the award of costs and informed him that, before sending the documents, he wanted him to undertake that the documents which the Organization had been ordered to disclose should in no way and in no circumstance be communicated to a third party.

4. The complainant considers that the defendant was not entitled to make the disclosure of the documents conditional on any undertaking whatever on his part, since the Tribunal had not stipulated any condition for access to the documents, and that the Organization's attitude causes him injury. That is the reason why he is asking the Tribunal to order the full execution of Judgment 2246 and to order the defendant, subject to a daily penalty, to provide him unconditionally, on the morrow of the forthcoming judgment, with the extracts of the documents at issue. He also claims compensation for moral injury and costs.

5. In its reply the defendant informed the Tribunal that the documents referred to in Judgment 2246 were sent to the complainant on 1 October 2003 - which is not in dispute - and that his application for execution of the judgement therefore serves no purpose.

It submits that, considering, firstly, the fact that it acted in good faith in compliance with its own rules - which could not be construed as breaching the Tribunal's ruling on the merits - secondly, the short time that elapsed between the date indicated by the Tribunal for the execution of its judgment and the date at which it was fully executed, and thirdly, the complainant's attitude, the moral injury alleged by the latter has not been established.

6. The complainant replies that, by the date on which he filed his complaint with the Tribunal, namely 4 September 2003, he had received none of the documents from the Organization which the latter had been ordered to provide him with pursuant to Judgment 2246. Thus the defendant did not strictly comply with the Tribunal's ruling, which had set a time limit of 30 days, thereby aggravating the moral injury already caused.

He considers, furthermore, that it only partially fulfilled its obligation to furnish him with the extracts of the minutes concerned, insofar as it withheld the report of the present Secretary General and the annexes thereto, which are referred to several times in one of the minutes. Therefore, the report is necessary for an understanding of the latter.

Lastly, he points out that the decision taken by the Executive Committee at its 139th session, held on 27 and 28 September 2003, to forbid him from disclosing the documents in question to third parties, amounts in practice to preventing him from using the documents to defend his good name and his reputation, and those of his family, if the term "third parties" is deemed to include his spouse, in particular.

He submits that the Organization is not entitled to render the disclosure of the documents ineffective by making it subject to a condition that impedes the free use of the documents, particularly for the purposes of any legal proceedings that might be initiated by himself or by any other person to rebut an accusation based on those same

documents.

Execution of Judgment 2246

7. The evidence shows that Interpol has already executed Judgment 2246, even though it acted outside the time limit of 30 days prescribed by the Tribunal. On 21 August 2003 it sent the complainant a cheque covering the amount of the costs awarded and, on 1 October, it sent him the documents referred to in the judgment.

The complainant contends that the defendant only partially fulfilled its obligation to allow him access to extracts of the relevant minutes, insofar as it withheld the report of the present Secretary General and its annexes, to which one of the minutes refers. The Tribunal draws attention to the fact, however, that in its Judgment 2246 it ordered the disclosure only of the documents requested by the complainant, namely the relevant extracts of the minutes of the Executive Committee's meetings, to the exclusion of all other documents.

For the above reasons and since Judgment 2246 has already been executed, the complainant's application for execution of that judgment serves no further purpose.

Moral injury

8. The complainant considers that he suffered moral injury on account of the attitude of the defendant, which, by failing to allow him access to the requested documents within the prescribed time limit and by making that access subject to conditions which were not laid down in Judgment 2246, had obliged him to initiate further proceedings before the Tribunal.

The Tribunal finds that the delay in supplying the documents cannot be attributed solely to the Organization. Prior to the expiry of the prescribed time limit, the latter had executed part of the judgment by paying the complainant's costs and, with regard to the other part, had written to the complainant asking him to undertake not to divulge the requested documents to third parties. Rather than reply to that letter, the complainant filed an application for execution with the Tribunal, whereas he ought to have shown good faith by replying to the defendant's request.

The Organization's good faith therefore cannot be doubted, particularly in view of the fact that, as confidential documents were involved, it could not be blamed for taking every precaution before disclosing them to the complainant, whom it could justifiably remind of his obligation to maintain the confidentiality of the documents. That, indeed, was the reason why the Secretary General considered it necessary to consult the Executive Committee before disclosing documents that gave details of discussions which, according to its Constitution, are confidential. The Tribunal, therefore, considers that no moral injury attributable to the Organization has been established.

9. Regarding the ban imposed on the complainant by the Executive Committee on disclosing the documents he received to third parties, the Tribunal considers that those documents should not be used for any purposes other than those for which their disclosure was ordered, and that they may be used only in the context of legal proceedings initiated by the complainant himself.

10. In view of the foregoing considerations, the application must be dismissed.

DECISION

For the above reasons,

The application is dismissed.

In witness of this judgment, adopted on 13 November 2003, Mr James K. Hugessen, Vice-President of the Tribunal, Mr Jean-François Egli, Judge, and Mr Seydou Ba, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 February 2004.

(Signed)

James K. Hugessen

Jean-François Egli

Seydou Ba

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 20 February 2004.