

NINETY-THIRD SESSION

(Application for execution)

Judgment No. 2135

The Administrative Tribunal,

Considering the application filed on 9 May 2001 by Mr P. D. and Mr F. F. for the execution of Judgment 1997, the reply of 13 September from the European Southern Observatory (ESO), the complainants' rejoinder of 5 October and the ESO's surrejoinder of 12 November 2001;

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

Having examined the written submissions and decided not to order hearings, for which none of the parties has applied;

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

A. The facts relevant to this case are recounted under A in Judgment 2133 delivered this day.

B. *Mutatis mutandis* the parties' arguments are the same as those put forward in the above-mentioned case, except that they pertain to salary adjustments for the year 1998.

CONSIDERATIONS

1. In Judgment 1997 delivered on 12 July 2000 the Tribunal set aside a decision taken on 22 September 1998 on behalf of the Director General implicitly rejecting the complainants' request concerning the adjustment of their salaries for the year 1998.

The Tribunal sent the case back to the Observatory for a recalculation of the complainants' salary adjustment for 1998 in accordance with Article R IV 1.01 of the Staff Regulations and in the light of its judgment.

2. The complainants have filed this application alleging failure by the ESO to recalculate the adjustment of their salaries for 1998. They are asking the Tribunal to order the execution of Judgment 1997 and to order the ESO, with a penalty for default, to pay the sums due to them pursuant to that judgment, together with interest on arrears at an annual rate of 10 per cent.

3. The ESO retorts that the comprehensive decision taken in the form of a Council Resolution of 19 June 2001 properly executes Judgments 1995, 1996 and 1997. In that resolution the Council decided, *inter alia*, to:

- adjust basic salaries by 4 per cent as from 1 January 2001;
 - adjust the allowances for dependent children on the basis of the Coordinated Organizations' recommendations for Germany;
 - increase the household allowance by 1 per cent;
 - authorise the Director General to grant one additional day of leave per calendar year;
 - grant a lump-sum payment of one full monthly salary per staff member (based on the salary of December 2000) *pro rata* to all staff members employed at 1 July 2001 who had been in service between 1 January 1996 and 31 December 2000.

4. In support of their claims the complainants and the ESO submit the same arguments and evidence as the parties to the case that gave rise to Judgment 2133, delivered this day.

5. For the same reasons as those given, *mutatis mutandis*, in Judgment 2133, the Tribunal considers that in any case Judgment 1997 has not yet been executed properly insofar as the Observatory has failed to show, particularly for 1998, that it calculated the adjustment of the complainants' salaries as required by Article R IV 1.01 of the Staff Regulations, using a methodology based on objective criteria leading to results that are stable, foreseeable and clearly understood.

6. The case is therefore sent back to the Observatory, which will reconsider the complainants' entitlement to a salary adjustment for the year 1998 in accordance with the instructions given in Judgment 1997. There is no need to set a penalty for default.

7. The complainants are entitled to costs, which the Tribunal sets at 1,000 euros.

DECISION

For the above reasons,

1. The ESO Council Resolution of 19 June 2001 does not properly execute Judgment 1997.
2. The case is sent back to the Observatory, which will recalculate the salary adjustment to which the complainants are entitled for the year 1998.
3. The Observatory shall pay to the complainants a global amount of 1,000 euros in costs.
4. The complainants' other claims are dismissed.

In witness of this judgment, adopted on 10 May 2002, Mr Michel Gentot, President of the Tribunal, Mr Seydou Ba, Judge, and Mr James K. Hugessen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 15 July 2002.

(Signed)

Michel Gentot

Seydou Ba

James K. Hugessen

Catherine Comtet