

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

*Registry's translation,  
the French text alone  
being authoritative.*

**F. R. (No. 5)**

**v.**

**UNESCO**

(Application for execution)

**130th Session**

**Judgment No. 4284**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for execution of Judgment 3936 filed by Ms A. L. F. R. on 1 July 2019, the reply of the United Nations Educational, Scientific and Cultural Organization (UNESCO) of 22 August, the complainant's rejoinder of 19 September and UNESCO's surrejoinder of 30 October 2019;

Considering the document submitted by UNESCO on 20 March 2020 and the complainant's observations thereon dated 24 March 2020;

Considering Articles II, paragraph 5, and VI, paragraph 1, of the Statute of the Tribunal;

Having examined the written submissions;

#### CONSIDERATIONS

1. In Judgment 3936, delivered in public on 24 January 2018, the Tribunal set aside the decision by which the Director-General of UNESCO had wrongly dismissed as time-barred the complainant's appeal against the decision of 18 February 2013 transferring her from Kinshasa to Paris. It remitted the case to UNESCO for the Appeals Board to examine the appeal and ordered the Organization to pay her 10,000 euros in moral damages and 1,000 euros in costs.

2. In this application for execution, the complainant asks the Tribunal to find that UNESCO has failed to execute Judgment 3936 and to order the Organization to review her case, possibly within a specific time frame. She also claims moral damages in the amount of 20,000 euros for each year of delay in executing Judgment 3936, accompanied by a fine of 25,000 euros for each month from the delivery of Judgment 3936, and an award of 2,000 euros in costs.

3. In support of her application for execution, the complainant alleges that there has been a regrettable delay in reviewing her internal appeal and that UNESCO, in addition to having failed in its duty to execute the judgment, has acted towards her with bad faith ill-befitting an international organisation. She adds that the Organization did not refer the matter to the Appeals Board – after she had sent it a reminder – until five months after the delivery of Judgment 3936, and that, in addition, the Organization engaged in delaying tactics by requesting and obtaining several extensions of the time limit for filing its response, thereby demonstrating bad faith in the execution of the aforementioned judgment.

4. UNESCO maintains that it has executed Judgment 3936 properly. It explains that the Secretary of the Appeals Board initiated the procedure for reviewing the internal appeal on 16 July 2018 and that, although on the date when the application for execution was filed the Appeals Board had not yet delivered its opinion, the procedure was in progress and the complainant's appeal was due to be considered in the "autumn of 2019". The Organization further submits that it acted in good faith by immediately executing the orders in Judgment 3936 concerning the payment of moral damages and costs, and also by cooperating with the complainant with a view to enabling her, as she had requested, to submit new pleas to the Appeals Board. It explains that it had to request several extensions of the time limit to file its reply owing to its excessive workload. It contends that the application should be dismissed, in particular the claims for damages, which are, in its view, unfounded, excessive and unwarranted.

5. The Tribunal recalls that its judgments, which, according to Article VI of its Statute, are "final and without appeal" and which also have *res judicata* authority, are immediately operative (see, for example, Judgments 3003, under 12, and 3152, under 11). As they may not later be

called into question except when an application for review is allowed, they must be executed as ruled (see, for example, Judgments 3566, under 6, and 3635, under 4). The parties must work together in good faith to execute judgments (see, for example, Judgments 2684, under 6, and 3823, under 4). Judgments must be executed within a reasonable period of time (see Judgments 2684, under aforementioned consideration 6, and 3656, under 3). In order to ascertain whether that has occurred, all the circumstances of the case must be taken into account, especially the nature and the scope of the action which the organisation is required to take (see, in particular, Judgment 3066, under 6).

6. The evidence shows that UNESCO immediately complied with orders 3 and 4 of Judgment 3936, relating to the payment of moral damages and costs.

By contrast, in respect of the Appeals Board's consideration of the complainant's appeal, it is not disputed that, when the complainant inquired on 28 June 2018 about the measures taken to execute Judgment 3936, which had been delivered five months earlier, the Appeals Board responded by merely sending her an e-mail from its Secretary dated 16 July 2018 asking the complainant, in a somewhat bizarre manner, to let her know what "files" she had already. After the complainant submitted her observations on 30 July 2018 and the Appeals Board delivered its opinion on 18 December 2019, the Director-General did not take a new decision until 12 February 2020, more than seven months after this application for execution was filed.

7. In the light of the foregoing, the Tribunal notes that, although Judgment 3936 has now been executed, the new decision taken pursuant to that judgment was not adopted until 12 February 2020, more than 24 months after the judgment was delivered in public.

The Organization explains that this considerable delay was due to its workload at that time.

8. In this regard, the Tribunal recalls its case law according to which "[a]n organisation may not justify its delay in handling a file by pleading reasons linked to the difficulties facing its Administration. It is up to the organisation to overcome a shortage of human or financial resources, so that no staff member who is waiting for a decision suffers undue delay, which constitutes a denial of a staff member's right to have

his or her requests handled with due diligence” (see, in particular, Judgments 2196, under 9, 2522, under 7, and 2768, under 6(a)).

It follows from the foregoing that the Organization’s highly regrettable delay in examining the complainant’s appeal is not justified in the light of the case law. It failed in its duty to execute Judgment 3936 promptly. Therefore, although the application for execution has become moot, the Tribunal considers it appropriate to award 7,000 euros in moral damages to the complainant, who had to wait more than 24 months for a new decision, which she received only after reminding the Organization and lodging an application for execution of Judgment 3936 with the Tribunal.

9. As the application succeeds in part, the complainant will be awarded costs, which the Tribunal sets at 1,000 euros.

#### DECISION

For the above reasons,

1. UNESCO shall pay the complainant 7,000 euros in moral damages.
2. It shall also pay her costs in the amount of 1,000 euros.
3. All other claims are dismissed.

In witness of this judgment, adopted on 26 June 2020, Mr Patrick Frydman, President of the Tribunal, Ms Fatoumata Diakité, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 24 July 2020 by video recording posted on the Tribunal’s Internet page.

*(Signed)*

PATRICK FRYDMAN

FATOUMATA DIAKITÉ

YVES KREINS

DRAŽEN PETROVIĆ