

SEVENTY-SIXTH SESSION

***In re* BLUSKE (No. 3)**

(Application for execution)

Judgment 1328

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for execution of Judgment 1242 filed by Mr. Guillermo Carlos Bluske on 29 July 1993, the reply of 13 September from the World Intellectual Property Organization (WIPO), the complainant's rejoinder of 12 October and the Organization's surrejoinder of 12 November 1993;

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

Having examined the written submissions;

CONSIDERATIONS:

1. In this, his third, complaint Mr. Bluske is seeking an order from the Tribunal against the World Intellectual Property Organization (WIPO) on the grounds of its failure to execute Judgment 1242 of 10 February 1993.

2. Judgment 1242 was prompted by the Organization's failure to execute Judgment 1154, which had quashed a decision by the Director General not to extend the complainant's fixed-term appointment. The relevant rulings are:

Judgment 1154

"2. The Organization shall reinstate the complainant by extending his appointment as from 16 June 1991.

3. If it cannot do so it shall pay him the equivalent of one year's salary and allowances in damages for all forms of injury he has sustained."

Judgment 1242

"2. The case is sent back to the Organization for a new decision on the reinstatement of the complainant.

3. The Organization shall pay the complainant the equivalent of one further year's salary and allowances in damages for all forms of injury he has sustained because of its failure to execute Judgment 1154.

4. It shall pay him 10,000 French francs in costs."

3. The facts are that the Organization has paid the complainant 130,156.45 Swiss francs under Judgment 1154 but has not yet discharged either of its obligations under Judgment 1242: to take a new decision on whether or not to reinstate him, and to pay him the one further year's salary and allowances.

4. The complainant observes that the Organization's response to the action he took to secure the execution of Judgment 1242 and to a formal claim he put to it on 15 March 1993 was to tell him through its agent, a member of the Bar of Geneva, that it was willing "to look for some common ground of understanding" and start negotiating with him. Seeing that as dilatory tactics intended to evade straightforward execution of Judgment 1242, he has chosen to come directly to the Tribunal to secure such execution and, failing reinstatement, an award of damages tantamount to the full reconstitution of his past and future career and the restoration of his pension entitlements.

5. WIPO maintains that for two reasons the complaint is irreceivable. First, it contends that the Tribunal may not hear any dispute over failure to execute one of its own judgments because Article II of its Statute does not say it is competent to do so. Secondly, it argues that insofar as the complainant is pleading failure to take a new decision

about reinstating him he ought first to have followed the appeal procedure within the Organization and his complaint is irreceivable because he has not exhausted the internal means of redress as Article VII(1) of the Tribunal's Statute requires.

6. On the merits the Organization points out that the complainant held a fixed-term appointment which it had no duty to renew on expiry. In accordance with Judgment 1242 it has, it says, made genuine efforts to reinstate him but reassigning him proves impossible because his attainments are limited: he has no legal or technical qualifications for work on patents and his knowledge of languages does not fit him for work anywhere but in Latin America. It has therefore offered to settle out of court, but he has turned the offer down.

7. Lastly, WIPO says that paying the large awards the Tribunal has made against it in the two judgments is a problem for its budget. The order in Judgment 1154 having been duly executed, the Director General may feel compelled to put the matter of the order in Judgment 1242 to the Organization's political authorities. There is a risk that after looking into the matter its Coordination Committee may consider declining to act on Judgment 1242 or even reviewing its recognition of the Tribunal's jurisdiction.

8. Those submissions reveal several misunderstandings between the parties about what Judgment 1242 means and how it relates to Judgment 1154. But before taking up those issues the Tribunal will dispose of the Organization's pleas about the scope of its competence and the thrust of its rulings.

The Tribunal's competence and the thrust of its rulings

9. In support of its contention that the Tribunal may not hear applications for the execution of its judgments WIPO argues that Article II of its Statute does not say it may, but vests in it competence to hear only disputes about the application to officials of staff regulations and the terms of their appointment.

10. To construe the Statute in that way is to overlook the fact that a dispute of the kind Article II refers to is not resolved until the Tribunal's judgment has been duly executed. So its competence is not exhausted when it passes judgment. Pending full execution the dispute remains unresolved and the Tribunal remains competent to rule on any issues that execution may raise. Thus it may rule on such issues as the interpretation, execution or review of a judgment. The present complaint falls indisputably within the ambit of the Tribunal's competence as so defined. The plea that it does not must therefore fail.

11. Another material point is that the Tribunal's rulings carry the authority of *res judicata*, save that in accordance with Article XII(1) of its Statute and the Annex thereto their validity may be challenged on referral by an organisation that has recognised its jurisdiction to the International Court of Justice on the grounds of lack of competence or a fundamental fault in the procedure followed. According to Article XII(2) the Court's advisory opinion is accepted in advance as binding. That bears out the absolutely compulsory character of the context in which the Tribunal passes judgment.

12. That rulings by international administrative tribunals are binding in particular where they make awards against organisations is the corollary of their judicial authority. The International Court of Justice so held in its advisory opinions of 13 July 1954 and 23 October 1956: see the ICJ Reports, 1954, page 4, and 1956, page 77. The opinion of 1956 was about four judgments by this Tribunal: Nos. 17 (in re Duberg), 18 (in re Leff), 19 (in re Wilcox) and 21 (in re Bernstein). In Judgment 553 (in re Usakligil No. 2) of 30 March 1983 the Tribunal explained the nature of the obligation that its rulings lay on an organisation:

"The Tribunal's judgments have the authority of *res judicata*. An international organisation which has recognised the Tribunal's jurisdiction is therefore bound, not merely to refrain from acting in disregard of a judgment, but first and foremost to take whatever action the judgment may require. That the judgment must be both respected and executed are thus principles which are beyond dispute, and they apply, in particular, where the organisation is ordered to pay a sum of money.

The debtor's obligation to pay must as a rule be discharged immediately unless the judgment states that the sum be payable only at some later date."

13. The possibility of cancellation of WIPO's recognition of the Tribunal's jurisdiction calls for no comment save that making an international organisation's decisions subject to judicial review affords a basic safeguard both of its own interests and of staff rights. Such a safeguard should not be lightly called into question on account of rulings

that may have gone against it in particular cases.

The cause of action and receivability

14. The Tribunal has ordered WIPO twice over to pay the complainant the equivalent of one year's salary and allowances. Judgment 1154 made the award conditional upon the Organization's having made unsuccessful efforts to reinstate him. Judgment 1242 ordered that since the Organization had not made the efforts required the case must again be sent back for a new decision on reinstatement and that "in any event" he was entitled to a further award of damages for the Organization's failure to execute Judgment 1154.

15. So, unlike the award in Judgment 1154, the one in Judgment 1242 is plainly unconditional in that it does not depend on the failure of efforts to reinstate the complainant but affords him redress for the failure to execute the ruling on reinstatement in Judgment 1154.

16. When properly seen in that context the complainant's present claims are not to confirmation of the award in Judgment 1242, which suffices in itself, but to two things: payment as from 24 March 1993 of interest on the sums that Judgment 1242 ordered WIPO in points 3 and 4 to pay him; and execution of the ruling in Judgment 1242 that WIPO must take "a new decision on the reinstatement of the complainant".

17. The foregoing shows the Organization to be mistaken in challenging receivability on the grounds of the complainant's failure to exhaust internal remedies. His sole purpose is to resolve the difficulties that have arisen over execution of Judgment 1242 because of the Organization's failure to discharge its obligations thereunder. As was said in Judgment 732 (in re Lorocho No. 3) under 2, "When there is difficulty over the execution of a judgment either side may as a rule seek the Tribunal's assistance and there is no need to go through the internal appeal procedure beforehand".

The merits

18. The claim to interest is allowed on account of the Organization's failure to pay promptly the awards in points 3 and 4 of Judgment 1242.

19. As for its failure to take the "new decision" ordered in point 2, it is in breach of good faith in forcing the complainant to the point of appealing against a refusal he has to infer from its own silence. Under point 2 it is required to give him an express and properly substantiated decision on the matter of reinstatement, whether he is reinstated or not.

20. On that score the case is sent back to the Organization for the earliest possible decision on the issue, the complainant's further claims being therefore immaterial.

DECISION:

For the above reasons,

1. WIPO shall pay the complainant compound interest reckoned as from 24 March 1993 at the rate of 10 per cent a year on the awards in Judgment 1242 under points 3 and 4.

2. The case is sent back to the Organization so that it may take at the earliest possible date the express and properly substantiated decision that Judgment 1242 requires under point 2.

3. It shall pay the complainant 10,000 French francs in costs.

4. His other claims are dismissed.

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

Delivered in public in Geneva on 31 January 1994.

(Signed)

José Maria Ruda
P. Pescatore
Michel Gentot
A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.